No. 17-647

In The
Supreme Court of the United States

ROSE MARY KNICK,

Petitioner,

v.

TOWNSHIP OF SCOTT; CARL S. FERRARO, Individually and in his Official Capacity as Scott Township Code Enforcement Officer,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX

J. DAVID BREEMER
Counsel of Record
MERIEM L. HUBBARD
BRIAN T. HODGES
CHRISTINA M. MARTIN
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
Telephone: (916) 419-7111
jbreemer@pacificlegal.org
Counsel for Petitioner

TERESA FICKEN SACHS
Marshall Dennehey Warner Coleman & Goggin
2000 Market Street, Suite 2300
Philadelphia, PA 19103
Telephone: (215) 575-2000
tfsachs@mdwcg.com
Counsel for Respondents

Petition for Writ of Certiorari filed October 31, 2017
Petition for Writ of Certiorari granted March 5, 2018

TABLE OF CONTENTS

Chronological List of Relevant Docket Entries, United States District Court, Middle District of Pennsylvania, Case No. 3:14-CV-02223-RDM 1

Chronological List of Relevant Docket Entries, United States Court of Appeals for the Third Circuit, Case No. 16-3587 4

Order, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas) Filed Oct. 21, 2014 5

Complaint Filed Nov. 20, 2014 [Dkt. 1] 6

Scott Township Lackawanna County Ordinance No. 12-12-20-001 Filed Feb. 3, 2015 [Dkt. 8-1] 20

Memorandum and Order, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas Jan. 30, 2015) [Dkt. 10-1 filed Mar. 2, 2015] 25

Memorandum Filed Oct. 29, 2015 [Dkt. 19] 42

Order Filed Oct. 29, 2015 [Dkt. 20] 90

Second Amended Complaint Filed Nov. 16, 2015 [Dkt. 21] 92

Exhibit A to Second Amended Complaint,
Notice of Violation dated Apr. 11, 2013
Filed Nov. 16, 2015 [Dkt. 21] 107

Exhibit B to Second Amended Complaint,
Notice of Violation dated Oct. 31, 2014
Filed Nov. 16, 2015 [Dkt. 21] 110

Transcript of Oral Argument, Aug. 31, 2016..... 113

Notice; Complaint Seeking Declaratory Judgment
and Injunctive Relief, *Knick v. Scott Township*,
No. 13 CV 2309 (Lackawanna County
Court of Common Pleas May 7, 2013)
[Dkt. 39-1 filed Oct. 25, 2016] 130

Exhibit A to Complaint Seeking Declaratory
Judgment and Injunctive Relief, *Knick v.*
Scott Township, No. 13 CV 2309
(Lackawanna County Court of
Common Pleas May 7, 2013)
[Dkt. 39-1 filed Oct. 25, 2016] 144

Exhibit B to Complaint Seeking Declaratory
Judgment and Injunctive Relief, *Knick v.*
Scott Township, No. 13 CV 2309
(Lackawanna County Court of
Common Pleas May 7, 2013)
[Dkt. 39-1 filed Oct. 25, 2016] 152

Exhibit C to Complaint Seeking Declaratory Judgment and Injunctive Relief, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas May 7, 2013) [Dkt. 39-1 filed Oct. 25, 2016] 156

Exhibit D to Complaint Seeking Declaratory Judgment and Injunctive Relief, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas May 7, 2013) [Dkt. 39-1 filed Oct. 25, 2016] 161

Exhibit E to Complaint Seeking Declaratory Judgment and Injunctive Relief, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas May 7, 2013) [Dkt. 39-1 filed Oct. 25, 2016] 166

Notice to Plead; Answer and New Matter of Defendant, Scott Township, to the Complaint of Plaintiff, Rose Mary Knick, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas filed Aug. 27, 2014) [Dkt. 39-2 filed Oct. 25, 2016] 169

Emergency Motion for Injunctive Relief, *Knick v. Scott Township*, No. 13 CV 2309 (Lackawanna County Court of Common Pleas May 9, 2013) [Dkt. 39-3 filed Oct. 25, 2016] 175

Order, *Knick v. Scott Township*, No. 13 CV 2309
(Lackawanna County Court of
Common Pleas May 9, 2013)
[Dkt. 39-3 filed Oct. 25, 2016] 178

Emails between Judy Malave, Courtroom Deputy
to Hon. A. Richard Caputo, to Frank Bolock, Jr.,
re: copies of pleadings filed in the Court of
Common Pleas (Sept. 6 & 7, 2016)
[Dkt. 39-5 filed Oct. 25, 2016] 179

Order
Filed Dec. 8, 2016 [Dkt. 41]..... 181

The following documents are not reproduced in the Joint Appendix because they appear in the Appendix to the Petition for Writ of Certiorari:

Memorandum, U.S. District Court for the
Middle District of Pennsylvania,
Filed Sept. 8, 2016.....B-1

Opinion, U.S. Court of Appeals for the
Third Circuit, Filed July 6, 2017 .....A-1

Judgment, U.S. Court of Appeals for the
Third Circuit, Filed July 6, 2017 .....C-1

Chronological List of Relevant Docket Entries

United States District Court
for the Middle District of Pennsylvania
Knick v. Township of Scott
Case No. 3:14-cv-02223-ARC

Dkt.	Date	Description
1	Nov. 20, 2014	Complaint
7	Jan. 20, 2015	Motion to Dismiss
8	Feb. 3, 2015	Brief in Support of Motion to Dismiss
9	Feb. 16, 2015	Amended Complaint
10	Mar. 2, 2015	Motion to Dismiss Plaintiff's Amended Complaint
12	Mar. 20, 2015	Brief in Support of Defendants' Motion to Dismiss Plaintiff's Amended Complaint
14	Mar. 31, 2015	Brief in Support of Defendants' Motion to Dismiss Plaintiff's Amended Complaint
15	Apr. 14, 2015	Plaintiff, Rose Mark Knick's Brief in Opposition to Defendants' Motion to Dismiss Plaintiff's Amended Complaint

Dkt.	Date	Description
16	Apr. 28, 2015	Reply to Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss Plaintiff's Amended Complaint
19	Oct. 29, 2015	Memorandum
20	Oct. 29, 2015	Order
21	Nov. 16, 2015	Second Amended Complaint
22	Nov. 30, 2015	Motion to Dismiss Plaintiff's Second Amended Complaint
24	Dec. 14, 2015	Brief in Support of Motion to Dismiss Plaintiff's Second Amended Complaint
26	Dec. 22, 2015	Plaintiff's Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint
27	Jan. 5, 2016	Defendant Scott Township's Reply to Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint

Dkt.	Date	Description
34	Sept. 8, 2016	Memorandum
35	Sept. 8, 2016	Order
36	Sept. 9, 2016	Notice of Appeal

Chronological List of Relevant Docket Entries

United States Court of Appeals
for the Third Circuit
Knick v. Township of Scott
Case No. 16-3587

Date	Description
Dec. 13, 2016	Appellant's Opening Brief
Dec. 19, 2016	Joint Appendix
Feb. 7, 2017	Brief for Defendants/Appellees
Feb. 21, 2017	Appellant's Reply Brief
Apr. 4, 2017	Clerk's Letter to Counsel instructing the parties to submit supplemental briefing on standing
Apr. 13, 2017	Supplemental Brief for Defendants/Appellees
Apr. 14, 2017	Appellant's Supplemental Brief
Apr. 18, 2017	Appellees' Summary of Oral Argument
Apr. 18, 2017	Appellant's Summary of Oral Argument
July 6, 2017	Opinion
July 6, 2017	Judgment
July 28, 2017	Mandate

Filed 10/21/2014

ROSE MARY KNICK Plaintiff v. SCOTT TOWNSHIP Defendant	IN THE COURT OF PLEAS OF LACKAWANNA COUNTY CIVIL DIVISION 13 CV 2309

ORDER

AND NOW, this 21st day of **October 2014**, upon consideration of Plaintiff's Motion for Injunctive Relief/Declaratory Judgment, the applicable law, and argument before this court on the matter, it is hereby ORDERED AND DECREED that this court will render no decision on the matter.

This court finds that it is not the proper venue for this matter, since this case is not in the proper posture for a decision to be rendered on the Plaintiff's requested forms of relief.

BY THE COURT:

s/ Braxton, SJ.
John Braxton

Cc. *Written notice of the entry of the foregoing Order has been provided to each party pursuant to Pa. R. Civ. P. 236 (a)(2) by mailing time-stamped copies to:*

Attorney for Plaintiff
Frank Bolock, Esq.
Bolock Law
212 Front Street
Clarks Summit, PA 18411

Attorney for Defendant
Joseph O'Brien, Esq.
Oliver, Price, and Rhodes
1212 S. Abington Road
PO Box 240
Clarks Summit, PA
18411-2234

Document 1 Filed 11/20/2014

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

ROSE MARY KNICK Plaintiff vs. SCOTT TOWNSHIP and CARL S. FERRARO, Individually and in his Official Capacity as Scott Township Code Enforcement Officer, Defendants	CIVIL ACTION – LAW JURY TRIAL DEMANDED NO.: [ELECTRONICALLY FILED]

COMPLAINT

AND NOW comes Plaintiff, Rose Mary Knick, by and through her attorney, Frank J. Bolock, Jr., Esquire, who files this Complaint against Defendants above-named as follows:

I. INTRODUCTION

1. Plaintiff, Rose Mary Knick, brings this action for monetary damages to address the deprivation of civil rights secured to her by 42 U.S.C. Section 1983. Specifically, she alleges that she was subjected to an unlawful search of her property on April 10, 2013 in violation of her rights under the Fourth Amendment to the United States Constitution. Additionally, Scott Township enacted "special legislation" in the form of Ordinance 12-12-20-001 in December of 2012. Plaintiff asserts that Scott Township Ordinance No.

12-12-20-001 violates the Constitution of the United States of America in that the Ordinance is unconstitutionally vague, creates a retroactive penal regulation regarding private property in violation of the prohibition against ex post facto laws, the Ordinance as applied to Plaintiff would result in the public taking of her property without compensation, it is further unconstitutional and unenforceable. The Defendants unlawful actions caused Plaintiff emotional distress and economic losses. She seeks economic damages, compensatory and punitive damages, and attorneys' fees and costs of this action.

II. JURISDICTION AND VENUE

2. Jurisdiction of this civil rights action is conferred by this Court by 28 U.S.C. Sections 1343 and 1331.

3. Venue herein proper under 28 U.S.C. Section 139(b) as the acts complained of herein all occurred within this judicial district.

III. PARTIES

4. Plaintiff, Rose Mary Knick, is a United States citizen residing at 49 Country Club Road, Scott Township, County of Lackawanna, Commonwealth of Pennsylvania 18433.

5. Defendant, Scott Township, is a political sub-division of the Commonwealth of Pennsylvania, organized and existing in accordance with the laws of Pennsylvania with a designation as a Township of the Second Class. Defendant, Scott Township's principal office is located at 1038 Montdale Road, Scott Township, County of Lackawanna, Commonwealth of Pennsylvania. Scott Township, as a Municipal entity,

is capable of being sued under 42 U.S.C. Section 1983, and is subject to the jurisdiction of this Court.

6. Defendant, Carl S. Ferraro, was at all times the Code Enforcement Officer of Scott Township and in his individual and official capacity was a policy maker for Scott Township.

7. Defendant, Carl S. Ferraro is a resident of Commonwealth of Pennsylvania and is being sued in his individual and official capacity.

IV. STATEMENT OF FACTS

8. Plaintiff, Rose Mary Knick, is the owner of the real estate located at 49 Country Club Road, Scott Township, County of Lackawanna, Commonwealth of Pennsylvania. The Knick property (hereinafter referred to as "the Premises") is comprised of two parcels intersected by Country Club Road. The Premises consists of approximately 90 acres. The Premises has been continuously owned and occupied by Rose Mary Knick and/or members of her family dating back from 1970 continuing up through the present time. The Premises has been utilized over the years as the primary residence for Rose Mary Knick and members of her family, as a cultivated farmland, grazing area for horses, cattle and other farm animals.

9. At all times relevant hereto the Premises has been posted at regular intervals, "No Trespassing." The Premises is bounded by stonewalls, fences and other boundary markers.

10. Plaintiff, Rose Mary Knick, a conscientious citizen, taxpayer advocate frequently attends meetings of the Scott Township Supervisors and regularly confronts the Scott Township Board of Supervisors and administrative officials with respect

to expenditure of funds, tax revenue issues and municipal decisions.

11. In September 2008, apparently, in response to a citizen inquiry regarding an alleged existence of an ancient burial ground on the Premises, The Scott Township Supervisors and Township Solicitor discussed the issue of the alleged burial ground at several public meetings.

12. In 2008 and early 2009 Plaintiff, Rose Mary Knick, individually and through her then Counsel, Attorney Robert Cecchini, made a Right-To-Know request of the Scott Township Supervisors as to the particulars regarding the suggestion that a burial ground was situate on her property. Rose Mary Knick, individually and through her Counsel, advised the Scott Township Supervisors that there was no designation in the chain of title regarding the Premises regarding the existence of a burial ground or cemetery on the Premises. Further, Plaintiff and her Counsel advised Scott Township that there was no physical evidence of the existence of a burial ground or cemetery on the Premises.

13. In response to Plaintiffs Right-To-Know request the Scott Township Supervisors provided Plaintiff, Rose Mary Knick, and her Counsel with some written statements of individuals indicating their belief that an ancient burial ground existed on the Premises.

14. In correspondence dated October 23, 2008, Plaintiff, Rose Mary Knick through her Attorney, Robert Cecchini, provided Scott Township through their Solicitor with correspondence confirming that in fact the Premises had no designated burial ground,

grave, grave yard or cemetery and further that his review of the chain of title and other documentation confirmed that there had never been any designation, registration or documentation establishing the existence of a cemetery, burial ground or grave yard on the Premises.

15. The Scott Township Board of Supervisors took no further action with regard to the issue of the cemetery, burial ground or grave yard on Plaintiffs Premises until October 2012 at which time the Scott Township Board of Supervisors enacted an Ordinance, specifically Ordinance #12-10-18-001. Subsequent to the enactment of the aforesaid Ordinance the Township Supervisors took no action to enforce said Ordinance with regard to the Premises of the Plaintiff.

16. In December of 2012 the Scott Township Board of Supervisors enacted an Ordinance, Ordinance 12-12-20-001 dealing with the issue of the operation and maintenance of cemeteries and burial places. The December 2012 Ordinance repealed the October 2012 Ordinance in its entirety.

17. On April 10, 2013, Defendant, Carl S. Ferraro, Scott Township Code Enforcement Officer, following a collective determination by the Township Supervisors, without benefit of permission or an Administrative warrant conducted an inspection of the Knick premises.

18. On April 11, 2013, Scott Township issued a Notice of Violation alleging that the Knick premises existed in violation of the Scott Township Ordinance 12-12-20-001.

19. On or about May 7, 2013, Plaintiff, Rose Mary Knick, filed a Complaint in the Court of Common Pleas of Lackawanna County seeking Declaratory and Injunctive Relief requesting that the Court: a) declare the Scott Township Ordinance 12-12-20-001 was unconstitutional, void, ineffective and without force; b) declare that Scott Township is precluded from enforcing said Ordinance against Plaintiff and decree and that the Notice of Violation dated April 11, 2013 is nullified; c) grant equitable relief in the form of a Special Injunction preliminarily following hearing and permanently thereafter to preclude and enjoin Scott Township from enforcing Ordinance 12-12-20-001; and, d) grant such other and appropriate relief including the award of attorneys fees.

20. The Plaintiff, Rose Mary Knick, through Counsel provided Defendant, Scott Township, with notice regarding the presentation of an Emergency Motion for Injunctive Relief on or about May 7, 2013 and Scott Township through their Solicitor stipulated and agreed to the entry of an Order which provided:

"ORDER

> AND NOW, this 9th day of May, 2013, upon consideration of the Plaintiff's Emergency Motion for Injunctive Relief, Defendant Scott Township's agreement to withdraw its Notice of Violation dated April 11, 2013, and in accordance with a Stipulation of Counsel for the Parties it is Hereby Ordered that all proceedings by Defendant Scott Township to enforce Ordinance No. 12-12-20-001 against Plaintiff Rose Mary Knick are Stayed pending the resolution of the issues raised in the

underlying Complaint seeking Declaratory and Injunctive Relief.

S/Nealon J."

21. A Hearing regarding Plaintiff's Complaint for Declaratory Judgment was eventually conducted by the Court of Common Pleas of Lackawanna County on October 8, 2014. The Court of Common Pleas of Lackawanna County, the Honorable John Braxton, entered an Order as follows:

"ORDER

AND NOW, this 21st day of October 2014, upon consideration of Plaintiff's Motion for Injunctive Relief/Declaratory Judgment, the applicable law, and argument before this court on the matter, it is hereby ORDERED AND DECREED that this court will render no decision on the matter. This court finds that it is not the proper venue for this matter, since the case is not in the proper posture for a decision to be rendered on the Plaintiff's requested forms of relief."

BY THE COURT:

Braxton ,SJ.
John Braxton"

22. On October 31, 2014, in violation of the Order of the Court of Common Pleas of Lackawanna County of May 9, 2013, Scott Township Supervisors and Scott Township Code Enforcement Officer Carl S. Ferraro issued a Notice of Violation alleging violation of Scott Ordinance 12-12-20-001.

V. CAUSES OF ACTION

COUNT I

CLAIM AGAINST DEFENDANT SCOTT TOWNSHIP FOR A VIOLATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS UNDER 42 U.S.C. SECTION 1983

23. Plaintiff, Rose Mary Knick, incorporates by reference the allegations of paragraphs 1 through 22 as though fully set forth herein.

24. Upon information and belief, Defendants Scott Township and Scott Township Board of Supervisors maintain a policy, practice, custom or procedure that its Code Enforcement Officer may effectuate warrantless entry onto the private property of citizens within Scott Township.

25. Scott Township's policy, custom, practice or procedure was the direct cause of the Scott Township's Code Enforcement Officer's action on April 10, 2013 consisting of his warrantless entry onto the private property of the Plaintiff, and as such resulted in the violation of Plaintiff's rights under the Fourth Amendment of the United States Constitution subjecting it to liability under 42 U.S.C. Section 1983.

26. Plaintiff has suffered damages as a result of Defendant Scott Township's unlawful policy, custom, practice or procedure.

WHREREFORE, Plaintiff, Rose Mary Knick, respectfully requests that this Court enter a judgment in her favor:

(a) Awarding her economic damages;

(b) Awarding her compensatory damages;

(c) Awarding her attorneys' fees and costs of this action; and

(d) Granting such other relief as the Court deems necessary and appropriate.

COUNT II

CLAIM AGAINST DEFENDANT SCOTT TOWNSHIP FOR A VIOLATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS UNDER 42 U.S.C. SECTION 1983 FOR FAILURE TO TRAIN

27. Plaintiff incorporates by reference the allegations of paragraphs 1 through 26 as though fully set forth herein.

28. Upon information and belief, prior to the events complained of herein, Defendant Scott Township failed to train its Code Official, or inadequately trained its Code Official, in the law with regard to the necessity for obtaining an Administrative warrant prior to conducting an inspection of private property under the circumstances presented herein. Furthermore, Defendant Scott Township failed to train, or inadequately trained, its Code Official with regard to the making of searches and inspection of private property. Defendant Scott Township also inadequately supervised or failed to discipline its Code Official for violation of individual Constitutionally protected rights.

29. Defendant Scott Township's failure to train its Code Official, and its inadequate training of its Code Official, and/or its inadequate supervision or discipline of its Code Official was the result of its

deliberate indifference to the Constitutional rights of the citizens of Scott Township, including Plaintiff.

30. Defendant Scott Township's failure to train its Code Official and/or its failure to properly supervise or discipline its Code Official was the direct cause of the Defendant Carl S. Ferraro, Scott Township Code Enforcement Officer actions on April 10, 2013, as complained of above, and as such, resulted in the violation of Plaintiff's rights under the Fourth Amendment of the United States Constitution subjecting it to liability under 42 U.S.C. Section 1983.

31. Plaintiff has suffered damages as a result of Defendant Scott Township's failure to train, inadequate training of, inadequate supervision of, or inadequate discipline of its Code Official.

WHEREFORE, Plaintiff, Rose Mary Knick, respectfully requests that this Court enter a judgment in her favor:

(a) Awarding her economic damages;

(b) Awarding her compensatory damages;

(c) Awarding her attorneys' fees and the costs of this action;

(d) Awarding her punitive damages; and

(e) Granting such other relief as the Court deems necessary and appropriate.

COUNT III

CLAIM AGAINST DEFENDANT CARL S. FERRARO IN HIS OFFICIAL AND INDIVIDUAL CAPACITY FOR VIOLATION OF PLAINTIFF'S FOURTH AND FOURTEENTH AMENDMENT RIGHTS UNDER 42 U.S.C. SECTION 1983

32. Plaintiff incorporates by reference the allegations of paragraph 1 through 31 as though fully set forth herein.

33. Defendant Ferraro's entry onto Plaintiff's private property and his conducting of a search on April 10, 2013 was made without an Administrative warrant, without permission and without legal justification.

34. Defendant Ferraro's actions as complained of above were taken under color of state law.

35. Defendant Ferraro's action constituted violation of Plaintiff's rights under the Fourth and Fourteenth Amendments under the United States Constitution resulting in liability under 42 U.S.C. Section 1983.

36. Plaintiff suffered damages as a direct result of Defendant Ferraro's unlawful actions including emotional distress.

37. Defendant Ferraro's actions as complained of, were willful, malicious, and/or were made in reckless disregard of Plaintiff's civil rights and Plaintiff is entitled to receive punitive damages.

WHEREFORE, Plaintiff, Rose Mary Knick, respectfully requests that this Court enter a judgment in her favor:

(a) Awarding her economic damages;

(b) Awarding her compensatory damages;

(c) Awarding her punitive damages;

(d) Awarding her attorneys' fees and costs of this action; and

(e) Granting such other relief as the Court deems necessary and appropriate.

COUNT IV

CLAIM AGAINST DEFENDANT SCOTT TOWNSHIP FOR VIOLATION OF PLAINTIFF'S CONSTITUTIONALLY PROTECTED RIGHTS PURSUANT TO THE FOURTH, FIFTH AND FOURTEENTH AMENDMENT RIGHTS, UNDER 42 U.S.C. SECTION 1983

38. Plaintiff incorporates by reference the allegations of paragraph 1 through 37 as though fully set forth herein.

39. Defendant, Scott Township enactment of "special legislation" in the form of Ordinance No. 12-12-20-001 is violative of the Plaintiff, Rose Mary Knick's Constitutionally protected rights pursuant to the Fourth, Fifth and Fourteenth Amendments. Said Ordinance is illegal, unconstitutional and without force of law in the following respects, among others:

a. The provisions of said Ordinance are vague, and;

b. The provisions of said Ordinance at Section 2 seeks to create a retroactive penal regulation regarding private property in violation of prohibition against ex post facto laws, and;

c. The provisions of said Ordinance are unreasonable and have no rationale relation to the promotion of public health and safety and exist as an improper exercise of the Township Police power, and;

d. The provisions of Section 5 of the Ordinance and Section 2 of the Ordinance attempt to impose regulations on private property which require that, "all cemeteries within the Township shall be kept open and accessible to the general public during day light hours. No owners or personnel shall unreasonably restrict access to the general public nor shall any fee for access be charged." These provisions exist as an effort at public taking without compensation, and;

e. The application of the Ordinance to Plaintiff's private property actually creates a nuisance by mandating public access to and across Plaintiff's private property which is otherwise not open to the public, and;

f. The Ordinance and Scott Township's effort at enforcement as substantial relationship to the promotion of public health and safety, and;

g. The provisions of Section 6 of the Ordinance attempt to grant to the Township rights to access private property which are violative of the Fourth Amendment of the United States Constitution.

40. The Plaintiff has suffered damages as a direct result of the enactment by Scott Township of Ordinance No. 12-12-20-001.

WHEREFORE, Plaintiff, Rose Mary Knick, respectfully requests that this Court enter a judgment in her favor:

(a) Awarding her economic damages;

(b) Awarding her compensatory damages;

(c) Awarding her punitive damages;

(d) Awarding her attorneys' fees and costs of this action; and

(e) Granting such other relief as the Court deems necessary and appropriate.

Respectfully submitted,

/s/ Frank J. Bolock, Jr., Esquire
Frank J. Bolock, Jr., Esquire
Atty. I.D. No. 29983
212 Front Street
Clarks Summit, PA 18411
Tel. (570) 585-5600
Fax (570) 585-5601

Attorney for Plaintiff Rose Mary Knick

Document 8-1 Filed 2/3/2015
United States District Court
for the Middle District of Pennsylvania

SCOTT TOWNSHIP
LACKAWANNA COUNTY
ORDINANCE NO. 12-12-20-001

ORDINANCE OF THE TOWNSHIP OF SCOTT TOWNSHIP, LACKAWANNA COUNTY, PENNSYLVANIA, RELATING TO THE OPERATION AND MAINTENANCE OF CEMETERIES AND BURIAL PLACES.

WHEREAS, Scott Township is a Pennsylvania Township of the Second Class duly organized and existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Second Class Township Code grants the Board of Supervisors of the Township to adopt Ordinances in which general or specific powers of the Township may be exercised in order to promote the health, safety and welfare of its residents; and

WHEREAS, 53 P.S. §66536 (a) (§1536) entitled "Cemeteries" authorizes the Board of Supervisors to make rules and regulations regarding the location, operation and maintenance of cemeteries within the Township by Ordinance; and

WHEREAS, the Board of Supervisors of Scott Township believes that regulating cemeteries within the Township serves in the best interest of the Township.

NOW, THEREFORE, the Board of Supervisors of the Township of Scott, Lackawanna County,

Pennsylvania, hereby ENACTS and **ORDAINS** as follows:

1.) **Definitions** –

a. "Burial Place" – A portion of ground either occupied by a tomb or grave or set apart for a tomb or grave for burial of the dead.

b. "Code Enforcement Officer" – The person duly appointed as the official Code Enforcement Officer for Scott Township, Lackawanna County.

c. "Cemetery" – A place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings.

d. "Owner" – An individual(s), entity, group, association or organization who holds title to the land upon which any cemetery is located or who is otherwise vested with the authority to operate/maintain same.

e. "Township" – Scott Township, Lackawanna County, Pennsylvania.

2.) **Applicability** – All cemeteries, whether private or public, and whether existing or established prior to the date of this Ordinance or hereafter created, are subject to the terms and conditions of this Ordinance.

3.) **Establishing Cemeteries** – It shall be unlawful for any person or owner to establish any cemetery or to bury any person within the Township,

except within a cemetery duly established in accordance with all laws, regulations, ordinances and procedures.

4.) **Maintenance of Cemeteries** – It shall be the duty of every owner to properly maintain and upkeep any cemetery. No owner shall allow grass, weeds or trees to accumulate upon same to the extent that any grave marker is obstructed and shall otherwise keep same free of debris and refuse,

5.) **Open to Public** – All cemeteries within the Township shall be kept open and accessible to the general public during daylight hours. No owner or personal shall unreasonably restrict access to the general public nor shall any fee for access be charged.

6.) **Abandoned/Neglected Cemeteries** – When any cemetery or burial place is abandoned or is being neglected and not up-kept or maintained, the Code Enforcement Officer, on behalf of the Board of Supervisors, shall give written notice to the owner directing the removal of weeds, trees, refuse and/or other debris from the cemetery within thirty (30) days. If the removal is not completed within thirty (30) days after the written notice, the Township may enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense. All costs of removal shall be assessed against the owner, if known, and thereafter shall be collected by the Township pursuant to 53 Y.S. §68302(b) of the Second Class Township Code. The Code Enforcement Officer and/or his/her agents and representatives may enter upon any property within the Township for the purposes of determining the existence of and location

of any cemetery, in order to ensure compliance with the terms and provisions of this Ordinance.

7.) **Violations/Penalties/Enforcement** – Any person or owner who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding before a District Justice or Magisterial District Justice, shall pay a fine and/or penalty of not less than Three Hundred ($300.00) Dollars nor more than Six Hundred ($600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense. In any case where penalty for a violation has not been timely paid, and the person against whom the penalty is imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed including additional reasonable attorney's fees incurred by the Township in any enforcement proceedings. If the violator neither pays nor timely appeals the judgment, once final, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

Nothing contained herein shall preclude the Township and/or Code Enforcement Officer from instituting any other appropriate civil or equitable proceeding to restrain, correct or abate a violation of this Ordinance as may be allowed for under any and all appropriate laws, statutes, Ordinances and/or regulations.

8.) **Other Laws, Ordinances, Codes or Regulations** – Nothing contained herein shall be deemed to nullify, replace, repeal or abrogate any other law, ordinance, rule, code or regulation

regarding cemeteries and same shall be separately applicable and/or enforceable in accordance with their own terms.

9.) **Severability** – If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not effect or impair any of the remaining provisions, sentences, clauses or parts of this Ordinance and same shall remain in full force and effect.

10.) **Effective Date/Repealer** – This Ordinance shall become effective five (5) days from the date of its enactment. Upon the effective date of this Ordinance, Ordinance #12-10-18-001 is hereby repealed in its entirety.

This Ordinance is **DULY ENACTED AND ORDAINED** on this 20th day of December, 2012, at a duly advertised public meeting of the Board of Supervisors.

ATTEST:

s/ Thomas W. Wuks
Secretary

s/ David Makala
Supervisor – Chairman

s/ Edward R. Hlavaty
Supervisor

_____
Supervisor

Document 10-1 Filed 03/02/2015
United States District Court
for the Middle District of Pennsylvania

Filed 1/30/2015

ROSE MARY KNICK, Plaintiff vs. SCOTT TOWNSHIP, Defendant	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY CIVIL ACTION – AT LAW NO. 13 CV 2309

MEMORANDUM AND ORDER

NEALON,J.

After a Scott Township landowner, whose property reportedly contains aged burial grounds, received notice from the Township to remove foliage and debris from the grave markers and to provide public access to the cemetery in accordance with the Township's Ordinance regulating cemeteries, the landowner filed this declaratory judgment action seeking a declaration that the Ordinance is unconstitutional and unenforceable. On May 9, 2013, the parties agreed to a Consent Order staying the Township's enforcement of the Ordinance against the landowner pending an adjudication of the landowner's declaratory judgment claim. The parties later argued the declaratory judgment issues before another judge, at which time the Township asserted that the alleged unconstitutionality of the Ordinance could only be raised in a civil enforcement proceeding filed by the Township, rather than via the exercise of equitable

jurisdiction to declare the Ordinance unconstitutional in advance of any such enforcement proceeding. Once the presiding judge held on October 21, 2014, that the common pleas court "is not the proper venue for this matter, since this case is not in the proper posture for a decision to be rendered on the [landowner's] requested forms of relief," the Township issued a new "Notice of Violation" to the landowner, who promptly filed the instant petition seeking to hold the Township and its Code Enforcement Officer in civil contempt for allegedly violating the stipulated stay Order of May 9, 2013, by issuing the violation notice.

To succeed with her contempt petition, the landowner must establish that the Township and its Code Enforcement Officer violated a clear and specific order volitionally and with wrongful intent. A fair reading of the ruling dated October 21, 2014, leads one to conclude that the presiding judge agreed with the Township and declined to assume equitable jurisdiction to entertain the landowner's constitutional challenge, finding instead that those constitutional issues should be addressed in any civil enforcement proceeding. Since the stay Order held the enforcement proceedings in abeyance only until the requested declaratory judgment relief was considered in this matter, it was reasonable for the Township to conclude that it was at liberty to enforce the cemetery Ordinance against the landowner following the ruling on October 21, 2014. Consequently, the landowner has not demonstrated by a preponderance of the evidence that the Township and the Code Enforcement Officer violated the prior stay Order with wrongful intent when they issued a new violation notice on October 31, 2014. As a result, the petition for civil contempt will be denied.

I. FACTUAL BACKGROUND

According to the parties' binding judicial admissions contained in their pleadings, Plaintiff, Rose Mary Knick ("Knick"), acquired 93.3 acres of land located in Scott Township in April 2008. (Docket Entry No. 1, Exhibit A; Docket Entry No. 11 at ¶ 3). At several public meetings in the fall of 2008, the Supervisors and Solicitor for Defendant, Scott Township ("the Township"), discussed the possible existence of a burial ground on Knick's property after being advised by Township residents that such a burial ground was present on that property. (Docket Entry No. 1 at ¶ 5; Docket Entry No. 6 at ¶ 5; Docket Entry No. 11 at ¶ 5). On October 23, 2008, Knick's former counsel forwarded a letter to the Township's Solicitor concerning the "Scott Township Board of Supervisors meetings of September 18, 2008, and October 16, 2008, wherein individuals indicated that they were looking for help to access a cemetery plot" on Knick's land. (Docket Entry No. 1 at ¶ 8, Exhibit B; Docket Entry No. 6 at ¶ 8; Docket Entry No. 11 at ¶ 6). Knick's ex-counsel requested documents "under the Right-to-Know Act that relate to the existence of a cemetery or burial ground on [Knick's] property," asserted that "[a]ny action by the Township should follow the procedures of the [Second Class] Township Code and the Pennsylvania Municipal Act under [53 P.S.] § 66536(a) regarding action by *ordinance* to make rules and regulations regarding the location, operation, and maintenance of cemeteries in the Township," and offered to have "any remains of servicemen that can be located on [Knick's] property

. . . properly removed and relocated" to another site.[1] (*Id.*, Exhibit B) (emphasis in original).

In October 2012, the Township Board of Supervisors enacted Ordinance No. 12-10-18-001 "Relating to the Operation and Maintenance of Cemeteries and Burial Places." (Docket Entry No. 1 at ¶ 9, Exhibit C; Docket Entry No. 6 at ¶ 9; Docket Entry No. 11 at ¶ 8). The Ordinance defines a "cemetery" as "a place or area of ground, whether contained on private or public property, which has been set apart or otherwise utilized as a burial place for deceased human beings," while a "burial place" is defined as "a portion of ground either occupied by a tomb or grave or set apart for a tomb or grave for burial of the dead." (*Id.*, Exhibit C at § 1(a), (c)). Section 4 of the Ordinance states that it is "the duty of every owner to properly maintain and upkeep any cemetery," and Section 5 authorizes the Township Code Enforcement Officer to deliver "written notice to the owner directing the removal of weeds, trees, refuse and/or other debris from the cemetery within thirty days." (*Id.* at §§ 4, 5). If the required maintenance "is not completed within thirty (30) days after the written notice, the Township may enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense." (*Id.* at § 5). In addition to enabling the Township to recover the costs of any such maintenance from the owner, the Ordinance provides

---

[1] Section 1536(a) of the Second Class Township Code, Act of May 1, 1933, P. L. 103, No. 69, *as amended*, Act of November 9, 1995, P. L. 350, No. 60, provides that "[t]he board of supervisors may by ordinance make rules and regulations regarding the location, operation and maintenance of cemeteries in the township." 53 P.S. § 66536(a).

that "[a]ny person or owner who violates or permits a violation of this Ordinance, upon being found liable therefor in a civil enforcement proceeding before a District Justice or Magisterial District Judge, shall pay a fine and/or penalty of not less than Three Hundred ($300.00) Dollars nor more than One Thousand ($1,000.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance." (*Id.* at §§ 5-6).

On December 20, 2012, the Township repealed Ordinance No. 12-10-18-001 and enacted Ordinance No. 12-12-20-001 in its stead. (Docket Entry No. 1 at ¶ 11, Exhibit D; Docket Entry No. 6 at ¶ 11; Docket Entry No. 11 at ¶ 9). The current Ordinance is identical to the repealed Ordinance, with two exceptions. First, the more recent Ordinance contains a new section, which reads:

> **Open to Public** – All cemeteries within the Township shall be kept open and accessible to the general public during daylight hours. No owner or personal (*sic*) shall unreasonably restrict access to the general public nor shall any fee for access be charged.

(*Id.* at § 5).[2] Second, the maximum fines or penalties recoverable in a civil enforcement proceeding have been reduced to $600.00 in the present Ordinance. (*Id.* at § 7).

---

[2] Section 1536(c) of the Second Class Township Code similarly states that "[t]he cemetery shall remain open to the public under the regulation and control of the board of supervisors." 53 P.S. § 66536(c).

On April 11, 2013, the Township's Code Enforcement Officer, Carl S. Ferraro, forwarded a "Notice of Violation" to Knick based upon his inspection of Knick's property on April 10, 2013, which reportedly revealed the presence of "[m]ultiple grave markers/tombstones" and led him to conclude "that a 'cemetery' as defined by Ordinance No. 12-12-20-001 exists on [her] property." (Docket Entry No. 1, Exhibit E at p. 1). Mr. Ferraro's notice cited the Ordinance requirement "that all cemeteries be maintained and kept up by the owner of the property" and remain "open and accessible to the general public during daylight hours." (*Id.*). Noting that the grave markers "were found to be obscured by trees, dirt and weeds" or "buried or covered with dirt and leaves," Mr. Ferraro directed Knick "to remove any weeds, trees or debris from the cemetery that may be obscuring the graves or markers" and "to make access to the cemetery available to the public during daylight hours." (*Id.* at pp. 1-2). Finally, the Code Enforcement Officer informed Knick that a "second inspection of the property" would be conducted in thirty-one days, that the Township would "enter upon the property" and perform the required maintenance if it was not completed by Knick within thirty days, and that Knick's failure to comply with the Ordinance would "result in a civil enforcement action being brought by the Township." (*Id.* at p. 2).

On May 7, 2013, Knick filed a "Complaint Seeking Declaratory Judgment and Injunctive Relief," seeking a declaration "that Scott Township Ordinance No. 12-12-20-001 is unconstitutional," "that Scott Township is precluded from enforcing said Ordinance against [Knick]," and that "the April 10, 2013 warrantless entry by Scott Township onto [Knick's] private

property is violative of [Knick's] constitutionally guaranteed right against unreasonable search and seizure." (Docket Entry No. 1 at pp. 6-8). After Knick's counsel advised the Township's former Solicitor of Knick's intention to file an "Emergency Motion for Injunctive Relief," the parties entered into a stipulation which was to be memorialized in a Consent Order. (Docket Entry No. 12, Exhibit A). As part of this stipulation, "Scott Township agree[d] to withdraw the Notice of Violation issued by the Code Enforcement Officer dated April 11, 2013, in its entirety," and likewise "agree[d] not to proceed with any enforcement whatsoever of Ordinance No. 12-12-20-001 pending final determination of [Knick's] action for Declaratory Judgment." (*Id.*). As a result of the parties' stipulation, Knick's claims seeking injunctive relief became "moot," and the parties instead opted "to litigate the Declaratory Relief Action in accordance with standard procedure under [the Pennsylvania] Rules." (*Id.*).

Consequently, on May 9, 2013, the parties presented a Consent Order to the undersigned in his capacity as the assigned Motions Court Judge. (Docket Entry No. 12 at ¶¶ 5-6). On that date, an Order was issued based upon "Scott Township's Agreement to Withdraw its Notice of Violation dated April 11, 2013," and the accompanying "Stipulation of Counsel for the parties." (Docket Entry No. 2). By virtue of the parties' stipulation, it was "ordered that all proceedings by Defendant Scott Township to enforce Ordinance No. 12-12-20-001 against Plaintiff Rose Mary Knick are stayed pending the resolution of the issues raised in the underlying Complaint seeking Declaratory and Injunctive Relief." (*Id.*).

Fifteen months later, Knick filed a "Praecipe for Assignment" with the Court Administrator on August 14, 2014, attesting that Knick had "filed a Complaint Seeking Declaratory Judgment" and that "[t]he parties through counsel intend to agree upon a set of stipulated facts that will require a briefing schedule and the scheduling of oral argument."[3] (Docket Entry No. 4). By notice dated August 18, 2014, the Court Administrator advised the parties that Visiting Senior "Judge John Braxton will hear oral argument on the Plaintiff Rose Mary Knick Declaratory Judgment on October 8, 2014," and established deadlines for the filing of the parties' briefs. (Docket Entry No. 5). In the interim, the parties executed and submitted a "Stipulation of Facts" in conjunction with that scheduled oral argument. (Docket Entry No. 11).

In advance of the oral argument, Knick filed a brief which argued that Ordinance No. 12-12-20-001 should be declared "as unconstitutional, void, ineffective and without force" and that the Township should, therefore, be permanently enjoined from seeking to enforce that Ordinance. (Docket Entry No. 7 at pp. 4-8). Citing *Pennsylvania Soc. for Prevention of Cruelty to Animals v. Bravo Enterprises.*

---

[3] Under Local Rule 211(a), a party seeking the assignment of "a motion or petition to a judge for disposition" must file a "Praecipe for Assignment" with the Clerk of Judicial Records and the Court Administrator. Lacka. Co. R.C.P. 211(a). The Praecipe for Assignment form requires the moving party to identify the motion, petition or pleading that is being submitted for a decision. *Id.*, Form 2. On her Praecipe for Assignment, Knick listed the "Complaint Seeking Declaratory Judgment" as the filing to be assigned to a judge for disposition. (Docket Entry No. 4).

Inc., 428 Pa. 350, 356-357, 237 A.2d 342, 346 (1968), the Township countered that a person facing potential prosecution is barred from having a court exercise equity jurisdiction to "adjudicate his guilt or innocence via a suit to enjoin his prosecution," and asserted that the proper forum for Knick's constitutional challenge to Ordinance No. 12-12-20-001 is in connection with any civil enforcement proceeding that may be instituted pursuant to the Ordinance. (Docket Entry No. 10 at pp. 2-3). The Township acknowledged an exception to this rule whereby a court may exercise equitable jurisdiction to protect property rights if an ordinance is unconstitutional and its enforcement will cause irreparable harm to the plaintiff's property, but maintained "that Knick cannot establish the basis for such equitable jurisdiction" since "[t]he circumstances of this case do not reflect any irreparable harm to Knick." (*Id.* at p. 3). Following the oral argument on October 8, 2014, Senior Judge Braxton issued an Order on October 21, 2014, which read:

> AND NOW, this 21st day of October, 2014, upon consideration of Plaintiff's Motion for Injunctive Relief/Declaratory Judgment, the applicable law, and argument before this court on the matter, it is hereby ORDERED and DECREED that this court will render no decision on the matter.
>
> This court finds that it is not the proper venue for this matter, since this case is not in the proper posture for a decision to be rendered on the Plaintiff's requested forms of relief.

(Docket Entry No. 9). Neither party filed an appeal from Judge Braxton's Order of October 21, 2014.

Upon receipt of Judge Braxton's Order, the Township Code Enforcement Officer, Mr. Ferraro, discussed it with the Township's Solicitor who advised Mr. Ferraro that the earlier stay Order dated May 9, 2013, was no longer in effect following Judge Braxton's ruling. On October 31, 2014, Mr. Ferraro forwarded another "Notice of Violation" to Knick. (Docket Entry No. 12, Exhibit D). Mr. Ferraro advised Knick that "[b]ased on information received from eyewitness accounts, it has been determined that a 'cemetery' as defined by Ordinance No. 12-12-20-001 exists on your property." (*Id.* at p. 1). Using language identical to the original "Notice of Violation" dated April 11, 2013, Mr. Ferraro informed Knick of the maintenance and public access requirements of the Ordinance, directed her to comply with those requirements within thirty days, stated that another inspection would be conducted in thirty-one days, and cautioned her about the prospect of "a civil enforcement action being brought by the Township" if she failed to comply with those requirements. (*Id.* at pp. 1-2).

In reply, Knick filed a complaint against Ferraro and the Township in federal court on November 20, 2014, seeking compensatory and punitive damages for alleged civil rights violations under 42 U.S. § 1983. *See Knick v. Scott Township et al*, No. 3:14 CV 2223 (M.D. Pa.). Six days later, Knick filed a "Petition for Contempt/Enforcement of Order Granting Injunctive Relief" in this state court action, and requested that Mr. Ferraro and the Township be held in contempt of the Order of May 9, 2013, for issuing a "Notice of

Violation" to Knick on October 31, 2014. (Docket Entry No. 12). On November 26, 2014, Judge Vito P. Geroulo issued a Rule upon Mr. Ferraro and the Township to show cause why they should not be held in contempt, and scheduled a hearing on the contempt petition for January 26, 2015. (*Id.* at p. 1). Judge Geroulo further ruled that "[a]ll proceedings regarding Scott Township's efforts to enforce Ordinance No. 12-12-20-001 are stayed pending disposition of this rule." (*Id.*).

Knick contends that "on October 8, 2014, the parties briefed, provided the judge with a stipulation of facts, and argued their respective positions with respect to the issue of the constitutionality of Ordinance No. 12-12-20-001," but that "[t]he October 21, 2014, Order by Judge John Braxton was a 'non decision' that did not dissolve or amend the May 9, 2013, Order of Court and did not result in the resolution of the matters raised" in the Complaint. (Docket Entry No. 15 at p. 4). Based upon that reasoning, Knick alleges that "[t]he October 31, 2014, Notice of Violation issued by the Scott Township Enforcement Officer was in direct violation of the May 9, 2013 Order of Court," such that the Township and Mr. Ferraro should be found in contempt. (*Id.* at pp. 4-5). The Township posits that since it consistently argued that "the unconstitutionality of the Ordinance must be raised in the summary enforcement proceedings themselves," its Code Enforcement Officer concluded, following consultation with its Solicitor, that Judge Braxton's Order of October 21, 2014, constituted a "resolution of the issues raised in the underlying Complaint," as a result of which the stay Order of May 9, 2013, "was no longer in effect." (Docket Entry No. 14 at pp. 3-4). Following the

completion of oral argument on January 26, 2015, Knick' s contempt petition became ripe for disposition.

II. DISCUSSION

(A) CONTEMPT BURDEN OF PROOF

"Contempt is a generic concept distinguished by two types, criminal and civil contempt," with each classification "serv[ing] a different purpose for regulating obstruction" of orderly process. *Warmkessel v. Heffner*, 17 A.3d 408, 414 (Pa. Super. 2011), *app. denied*, 613 Pa. 671, 34 A.3d 833 (2011). If the dominant purpose is to vindicate the authority of the court and to protect the interest of the general public by punishing the contemnor for a past violation, it is a proceeding for criminal contempt. *Gunther v. Bolus*, 853 A.2d 1014, l 016 (Pa. Super. 2004), *app. denied*, 578 Pa. 709, 853 A.2d 362 (2004). "But where the act of contempt complained of is the refusal to do or refrain from doing some act ordered or prohibited primarily for the benefit of some private party, proceedings to enforce compliance with the decree of the court are civil in nature." *Warmkessel, supra* (quoting *Stahl v. Redcay*, 897 A.2d 478, 486 (Pa. Super. 2006), *app. denied*, 591 Pa. 704, 918 A.2d 747 (2007)). At the time of oral argument, Knick confirmed that her petition only seeks to hold Mr. Ferraro and the Township in civil contempt.

In civil contempt proceedings, "[j]udicial sanctions are employed to coerce the defendant into compliance with the court's order, and in some instances, to compensate the complainant for losses sustained." *In re Contempt of Attorney Christopher P. Cullen*, 949 A.2d 1207, 1210 (Pa. Super. 2004), *app. denied*, 582 Pa. 676, 868 A.2d 1201 (2005). The burden of proof

rests with the complaining party to demonstrate that the defendant is in noncompliance with a court order. *MacDougall v. MacDougall*, 49 A.3d 890, 892 (Pa. Super. 2012), *app. denied*, 621 Pa. 679, 75 A.3d 1282 (2013). "However, a mere showing of noncompliance with a court order, or even misconduct, is never sufficient alone to prove civil contempt." *In re Contempt of Cullen*, *supra* (quoting *Lachat v. Hinchcliffe*, 769 A.2d 481, 488 (Pa. Super. 2001)).

To sustain a finding of civil contempt, the complainant must prove by a preponderance of the evidence that: (1) the contemnor had notice of the specific order or decree which [s]he is alleged to have disobeyed; (2) the act constituting the contemnor's violation was volitional; and (3) the contemnor acted with wrongful intent. *Habjan v. Habjan*, 73 A.3d 630, 637 (Pa. Super. 2013); *In re Contempt of Cullen*, 849 A.2d at 1210-1211. "Wrongful intent" on the part of the contemnor "requires evidence that the contemnor knows or should reasonably be aware that his [/her] conduct is wrongful." *Com. v. Odom*, 764 A.2d 53, 56 (Pa. Super. 2000). Furthermore, "[t]o be punished for contempt, a party must not only have violated a court order, but that order must have been 'definite, clear and specific—leaving no doubt or uncertainty in the mind of the contemnor of the prohibited conduct.'" *Stahl*, 897 A.2d at 489 (quoting *In re Contempt of Cullen*, 849 A.2d at 1210); *Com., Department of Environmental Protection v. Finch Hill Water Company, Inc.*, 2011 WL 2262480, at *2 (Lacka. Co. 2011). "Because the order forming the basis for civil contempt must be strictly construed, any ambiguities or omissions in the order must be construed in favor of the defendant." *Bold v. Bold*, 939 A.2d 892, 897 (Pa. Super. 2007); *In re Contempt of Cullen*, *supra*;

Moskwa v. Pilosi, 2011 WL 1560034, at *3 (Lacka. Co. 2011).

(B) STIPULATED STAY ORDER

To secure her requested contempt relief, Knick must demonstrate by a preponderance of the evidence that Mr. Ferraro and the Township violated a "definite, clear and specific" order, and did so with "wrongful intent" in that they knew, or reasonably should have known, that their actions were violative of the order. Stated another way, Knick must prove that (1) the issuance of a "Notice of Violation" on October 31, 2014, violated the parties' stipulated stay Order of May 9, 2013, and (2) Mr. Ferraro and the Township knew or should have known that the issuance of the "Notice of Violation" to Knick was in contravention of the earlier stay Order.

The parties' submissions reflect that on May 9, 2013, the Township agreed to withdraw its original "Notice of Violation" dated April 11, 2013, and to stay "all proceedings by Defendant Scott Township to enforce Ordinance No. 12-12-20-001 against Plaintiff Rose Mary Knick" pending the disposition of the declaratory judgment claim asserted by Knick. (Docket Entry No. 2 at p. 1). The Township solicitor's letter of May 8, 2013, clearly states that the "Stipulated Order" would memorialize the Township's agreement "not to proceed with any enforcement whatsoever of Ordinance No. 12-12-20-001 pending final determination of [Knick's] action for Declaratory Judgment." (Docket Entry No. 12, Exhibit A). The only declaratory judgment relief sought by Knick in her complaint was a declaration that Ordinance No. 12-12-20-001 is unconstitutional. (Docket Entry No. 1 at ¶¶ 15-27). The solicitor's correspondence dated May 8,

2013, documents the Township's understanding that as a result of the parties' stipulation, Knick's claims "regarding Injunctive Relief' were rendered moot. (Docket Entry No. 12, Exhibit A). Thus, construing any ambiguities in the stipulated stay Order in favor of the Township, the consent Order that was prepared by counsel and executed on May 9, 2013, merely stayed enforcement of the Ordinance against Knick until a ruling was made on Knick's constitutional challenge to the Ordinance in this case.

More than one year after the entry of the stay Order, Knick filed a "Praecipe for Assignment" to have her "Complaint Seeking Declaratory Judgment" assigned to a judge for disposition based "upon a set of stipulated facts" to be submitted by the parties. (Docket Entry No. 4). Knick' s brief in connection with that scheduled proceeding argued that Ordinance No. 12-12-20-001 should be declared "unconstitutional, void, ineffective and without force," whereas the Township maintained that Knick's constitutional attack should be addressed in any civil enforcement proceeding that may be filed by the Township, since Knick had not established the requisite constitutional infirmity and irreparable harm to invoke the common pleas court's equitable jurisdiction. (Docket Entry No. 7 at pp. 4-8; Docket Entry No. 10 at pp. 2-3). Although Judge Braxton's postargument Order does indicate "that this court will render no decision on the matter," it further states that "[t]his court finds that it is not the proper venue for this matter since this case is not in the proper posture for a decision to be rendered on [Knick's] requested form of relief." (Docket Entry No. 9).

A reasonable interpretation of Judge Braxton's Order of October 21, 2014, is that he agreed with the Township's argument predicated upon *Bravo Enterprises*, and concluded that Knick's constitutional challenge to the Ordinance should be litigated in any civil enforcement proceeding that may be filed by the Township pursuant to Section 7 of the Ordinance.[4] Under such a plausible construction, Judge Braxton addressed the remaining "issues raised in the underlying Complaint" and concluded that Knick's request to have the Ordinance declared unconstitutional should be reserved for any civil enforcement action that may be filed by the Township. In that event, the stipulated stay "pending the resolution of the issues raised in the underlying Complaint" was no longer in effect. Thus, Knick has not demonstrated by a preponderance of the evidence that the actions of Mr. Ferraro and the Township in

---

[4] To exercise the equitable jurisdiction that was advocated by Knick under *Bravo Enterprises*, Judge Braxton would have been required to conclude (1) that Ordinance No. 12-12-20-001 was unconstitutional, and (2) that its enforcement would cause irreparable harm to Knick's property. *See Bravo Enterprises*, 428 Pa. at 356-357, 237 A.2d at 346; *Marcus v. Diulus*, 242 Pa. Super. 151, 159, 363 A.2d 1205, 1209 (1976). Harm "is deemed irreparable if it cannot be adequately compensated by an award of damages," *Cosner v. United Penn Bank*, 358 Pa. Super. 484, 492, 517 A.2d 1337, 1341 (1986), or if the damage "can be estimated only by conjecture and not by an accurate pecuniary standard." *Ambrogi v. Reber*, 932 A.2d 969, 978 n.5 (Pa. Super. 2007), *app. denied*, 597 Pa. 725, 952 A.2d 673 (2008); *Czarkowski v. Jennings*, 2013 WL 6074077, at *5 (Lacka. Co. 2013). By filing a federal lawsuit seeking to recover compensatory and punitive damages as a result of the Township's enforcement of the Ordinance, Knick has tacitly recognized that her alleged harm can be compensated by an award of damages and, therefore, is not "irreparable."

issuing a new "Notice of Violation" constituted noncompliance with "definite, clear and specific" language in the consent Order of May 9, 2013.

Nor has Knick established that Mr. Ferraro and the Township acted with "wrongful intent" by issuing the 2014 "Notice of Violation." Following consultation with the Township solicitor, Mr. Ferraro and the Township concluded that the stay Order was no longer in effect following Judge Braxton's ruling of October 21, 2014. The record is devoid of any suggestion that Mr. Ferraro and the Township knew, or reasonably should have known, that they were ostensibly violating the stay Order by issuing a new "Notice of Violation." In short, Knick has not satisfied her burden of proving a violation of the stay Order by Mr. Ferraro and the Township with wrongful intent, and as such, her petition for civil contempt will be denied.

Document 19 Filed 10/29/2015

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROSE MARY KNICK, Plaintiff, v. **SCOTT TOWNSHIP, et al.,** Defendants.	CIVIL ACTION NO. 3:14-CV-2223 (JUDGE CAPUTO)

MEMORANDUM

Presently before the Court is a Motion to Dismiss Plaintiff's Amended Complaint (Doc. 10.) filed by Defendants Scott Township and Carl Ferraro ("Ferraro"), individually and in his official capacity as Code Enforcement Officer of Scott Township. According to Plaintiff, Ms. Rose Mary Knick ("Ms. Knick"), Scott Township and Ferraro violated her constitutional rights through enactment and enforcement of a township ordinance addressing the operation and maintenance of cemeteries and burial grounds within Scott Township. As such, Plaintiff commenced this action asserting four (4) claims under 42 U.S.C. § 1983 and one (1) claim for relief pursuant to the Declaratory Judgment Act, seeking both declarative and injunctive relief. Defendants seek dismissal of the Amended Complaint in its entirety under Federal Rule of Civil Procedure 12(b)(6). Because Plaintiff has failed to adequately state claims for violations of her constitutional rights under § 1983, the motion to dismiss Counts I through IV shall be

granted. Because Ms. Knick's request for a declaratory judgment would serve no purpose in the current action, the motion to dismiss Count V will be granted.

I. Background

The facts as alleged in the Amended Complaint (Doc. 9.) are as follows:

Rose Mary Knick is a resident of Scott Township, Pennsylvania. (*Am. Compl.*, ¶ 5.) Scott Township is a political subdivision of the Commonwealth of Pennsylvania, organized and designated as a Township of the Second Class. (*Id.* at ¶ 6.) Carl Ferraro was the Code Enforcement Officer of Scott Township and a resident of the Commonwealth of Pennsylvania. (*Id.* at ¶¶ 7-8.)

Ms. Knick owns approximately 90 acres of real estate, comprised of two parcels, located at 49 Country Club Road, in Scott Township, Pennsylvania. (*Id.* at ¶ 9.) The property has been continuously owned and occupied by Ms. Knick and her family members since 1970. (*Id.*) The property has been used as a primary residence, as well as farmland and grazing areas for horses, cattle and other farm animals. (*Id.*) There are "No Trespassing" signs placed at regular intervals and the property is bounded by stonewalls, fences and other boundary markers. (*Id.* at ¶ 10.)

Ms. Knick frequently attends meetings of the Scott Township Board of Supervisors ("Supervisors") and regularly confronts the Supervisors and administrative officials with respect to the expenditure of funds, tax revenue issues, and municipal decisions. (*Id.* at ¶ 11.)

In September 2008, at several public meetings and in response to a citizen inquiry, the Supervisors and the Township Solicitor discussed the alleged existence of an ancient burial ground on Ms. Knick's property. (*Id.* at ¶ 12.) In 2008 and early 2009, Ms. Knick, as well as her counsel at the time, made a Right-to-Know request of the Supervisors. (*Id.* at ¶ 13.) The request sought particulars regarding the suggestion that an ancient burial ground was on her property. (*Id.*) Ms. Knick and her counsel also advised the Supervisors that there was no designation in the chain of title to her property regarding a burial ground or cemetery and also that there was no physical evidence of the existence of a burial ground or cemetery. (*Id.*) Ms. Knick's attorney provided Scott Township, through their solicitor, a correspondence dated October 23, 2008, reiterating that there was no designation of a burial ground or cemetery in the chain of title nor any evidence of such on Ms. Knick's property. (*Id.* at ¶ 14.)

From October 2008 through October 2012, Ms. Knick continued to attend Supervisor meetings and regularly confronted the Supervisors and administrative officials about the expenditure of funds, tax revenue issues, and various municipal decisions. (*Id.* at ¶ 15.) The Supervisors and administrative officials, including Ferraro, expressed their annoyance, aggravation, and displeasure, both publicly and privately, regarding Ms. Knick's exercise of her First Amendment Rights. (*Id.*)

In December 2012, the Supervisors enacted an ordinance, specifically Ordinance 12-12-20-001 ("Ordinance"). (*Id.* at ¶ 16.) The Ordinance addresses the operation and maintenance of cemeteries and

burial grounds within Scott Township. (*Id.*) There were no complaints at the time with regard to any cemeteries in Scott Township. (*Id.*) The Supervisors determined the Ordinance would be applied to Ms. Knick and her property. (*Id.*)

On April 10, 2013, after a collective determination by the Supervisors, Ferraro entered on to Ms. Knick's property without permission and without an administrative warrant. (*Id.* at ¶ 18.) On April 11, 2013, Scott Township issued a Notice of Violation alleging that Ms. Knick's property existed in violation of the Ordinance. (*Id.* at ¶ 19.)

On May 7, 2013, Ms. Knick filed a complaint in the Lackawanna County Court of Common Pleas seeking declaratory and injunctive relief and requested that the court take the following actions: declare the Ordinance unconstitutional, void, ineffective and without force of law; declare that Scott Township is precluded from enforcing the Ordinance against Ms. Knick and decree the Notice of Violation nullified; grant equitable relief in the form of a Special Injunction preliminarily following a hearing, and permanently thereafter to preclude and enjoin Scott Township from enforcing the Ordinance; and grant other and appropriate relief, including awarding attorney's fees. (*Id.* at ¶ 20.) Ms. Knick, through counsel, provided Scott Township with notice regarding the presentation of an Emergency Motion for Injunctive Relief on or about May 7, 2013. (*Id.* at ¶ 21.) In response, the parties agreed and stipulated to an order as follows:

ORDER

AND NOW, this 9th day of May, 2013, upon consideration of the Plaintiff's Emergency Motion for Injunctive Relief, Defendant Scott Township's agreement to withdraw its Notice of Violation dated April 11, 2013, and in accordance with a Stipulation of Counsel for the Parties, it is Hereby Ordered that all proceedings by Defendant Scott Township to enforce Ordinance No. 12-12-20-001 against Plaintiff Rose Mary Knick are stayed pending the resolution of the issues raised in the underlying Complaint seeking Declaratory and Injunctive Relief.

/s/ Nealon, J.

(*Id.*) A hearing was held on October 8, 2014 in the Lackawanna County Court. (*Id.* at ¶ 22.) Following the hearing, Judge John Braxton issued the following Order:

ORDER

AND NOW, this 21st day of October 2014, upon consideration of the Plaintiff's Motion for Injunctive Relief/Declaratory Judgment, the applicable law, and argument before this court on the matter, it is hereby ORDERED AND DECREED that this court will render no decision on the matter.

This court finds that it is not the proper venue for this matter, since the case is not in the proper posture for a decision to be rendered on the Plaintiff's requested forms of relief.

BY THE COURT:

Braxton , SJ.
John Braxton

(*Id.*) On October 31, 2014, the Supervisors and Ferraro issued another Notice of Violation alleging Ms. Knick's noncompliance with the Ordinance. (*Id.* at ¶ 23.) Ms. Knick filed a Petition for Contempt of Court in the Lackawanna County Court of Common Pleas. (*Id.* at ¶ 24.) After a hearing, Judge Terrance Nealon denied the Petition for Contempt and entered a Memorandum and Order. (*Id.*) The Lackawanna County Court of Common Pleas has not addressed Ms. Knick's request for Declaratory Relief. (*Id.*)

Ms. Knick initiated this action on November 20, 2014. (Doc. 1.) In the original complaint, Ms. Knick alleged violations, under 42 U.S.C. § 1983, of her Fourth Amendment rights against Scott Township, both for maintaining a policy, practice, custom or procedure and for failing to or for inadequately training, or failing to adequately supervise or discipline the Code Official. (Counts One and Two) She also alleged violations of her Fourth and Fourteenth Amendment rights by Ferraro in his official and individual capacity under 42 U.S.C. § 1983. (Count Three) Ms. Knick alleged violations of her First, Fourth, Fifth, and Fourteenth Amendment rights under 42 U.S.C. § 1983 through Scott Township's enactment of the Ordinance (Count Four). Defendants Scott Township and Ferraro filed a motion to dismiss. (Doc. 8.) Subsequently, Plaintiff filed an Amended Complaint asserting the four causes of action above with an additional claim. (Doc. 9.) Ms. Knick additionally requests relief pursuant to the Declaratory Judgment Act (Count Five). Ms. Knick

requests a declaratory judgment deeming the Ordinance unconstitutional. She also seeks a Temporary Restraining Order and Preliminary and Permanent Injunctive relief. On March 2, 2015, Defendants filed a motion to dismiss the Amended Complaint. (Doc. 10.) On March 20, 2015, Ms. Knick filed a motion for an order for dismissal of Defendants' motion to dismiss for failure to file a brief in support within twenty (20) days. (Doc. 11.) On March 20, 2015, Defendants filed a motion for leave to file a reply brief *nunc pro tunc*. (Doc. 12.) An order was issued granting leave to file *nunc pro tunc*. (Doc. 13.) Defendants filed a brief in support of their motion to dismiss on March 31, 2015. (Doc. 14.) Ms. Knick filed a brief in opposition on April 14, 2015. (Doc. 15.) Defendants filed a reply brief on April 28, 2015. (Doc. 16.) The motion has been briefed and is ripe for review.

II. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) provides for the dismissal of a complaint, in whole or in part, for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). When considering a Rule 12(b)(6) motion, the Court's role is limited to determining if a plaintiff is entitled to offer evidence in support of their claims. *See Semerenko v. Cendant Corp.*, 223 F.3d 165, 173 (3d Cir. 2000). The Court does not consider whether a plaintiff will ultimately prevail. *See id.* A defendant bears the burden of establishing that a plaintiff's complaint fails to state a claim. *See Gould Elecs. v. United States*, 220 F.3d 169, 178 (3d Cir. 2000).

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R.

Civ. P. 8(a)(2). The statement required by Rule 8(a)(2) must "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007) (per curiam) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). Detailed factual allegations are not required. *Twombly*, 550 U.S. at 555, 127 S. Ct. 1955. However, mere conclusory statements will not do; "a complaint must do more than allege the plaintiff's entitlement to relief." *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009). Instead, a complaint must "show" this entitlement by alleging sufficient facts. *Id.* "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009). As such, "[t]he touchstone of the pleading standard is plausibility." *Bistrian v. Levi*, 696 F.3d 352, 365 (3d Cir. 2012).

The inquiry at the motion to dismiss stage is "normally broken into three parts: (1) identifying the elements of the claim, (2) reviewing the complaint to strike conclusory allegations, and then (3) looking at the well-pleaded components of the complaint and evaluating whether all of the elements identified in part one of the inquiry are sufficiently alleged." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011).

Dismissal is appropriate only if, accepting as true all the facts alleged in the complaint, a plaintiff has not pleaded "enough facts to state a claim to relief that is plausible on its face," *Twombly*, 550 U.S. at 570, 127 S. Ct. 1955, meaning enough factual allegations "'to raise a reasonable expectation that discovery will

reveal evidence of" each necessary element. *Phillips v. Cty of Allegheny*, 515 F.3d 224, 234 (3d Cir. 2008) (quoting *Twombly*, 550 U.S. at 556, 127 S. Ct. 1955). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678, 129 S. Ct. 1937. "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* at 679, 129 S. Ct. 1937.

In deciding a motion to dismiss, the Court should consider the complaint, exhibits attached to the complaint, and matters of public record. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) (citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)). The Court may also consider "undisputedly authentic" documents when the plaintiff's claims are based on the documents and the defendant has attached copies of the documents to the motion to dismiss. *Pension Benefit Guar.*, 998 F.2d at 1196. The Court need not assume the plaintiff can prove facts that were not alleged in the complaint, *see City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 263 & n.13 (3d Cir. 1998), or credit a complaint's "'bald assertions'" or "'legal conclusions.'" *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1429-30 (3d Cir. 1997)).

III. Discussion

Defendants seek to dismiss Ms. Knick's Amended Complaint in its entirety for failure to state a claim upon which relief can be granted. The Court will

address the sufficiency of each count of Ms. Knick's Amended Complaint below.

A. Stay/Dismissal

Preliminarily, Defendants ask that I consider dismissal or a stay of the current action pending the outcome of the Ms. Knick's ongoing suit filed in the Lackawanna County Court of Common Pleas (Doc. 10 at ¶ 53; Doc. 14, 3-4.), asserting that Ms. Knick is "estopped from pursuing this matter since she is currently litigating a previously filed state court action." (Doc. 10 at ¶ 53.) It is settled that this Court's ability to stay an action is "incidental" to the Court's "inherent power," *Landis v. North Am. Co.*, 299 U.S. 248, 57 S.Ct. 163, 81 L.Ed. 153 (1936), and that motions seeking a stay are addressed in the court's discretion. *Bechtel v. Local 215 Laborers' Int'l Union*, 544 F.2d 1207, 1215 (3d Cir. 1976). In *Brillhart v. Excess Ins. Co. of Am.*, 316 U.S. 491, 496, 62 S. Ct. 1173, 1176, 86 L. Ed. 1620 (1942), the Supreme Court addressed the scenario where a request for a federal declaratory judgment was filed while an action was pending in state court presenting the same issues and involving the same parties. The Court set forth that the district court should consider the following when determining whether to exercise jurisdiction:

> Where a district court is presented with a claim such as was made here[1], it should ascertain whether the questions in controversy between the parties to the

[1] The request for Declaratory Judgment in *Brillhart* was from an insurance company, requesting a determination of rights under a reinsurance agreement. *Id.* at 492, 1174 (remanding the case to the district court to conduct the discretionary inquiry the Court set forth).

> federal suit, and which are not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in the state court. This may entail inquiry into the scope of the pending state court proceeding and the nature of defenses open there. The federal court may have to consider whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc.

Brillhart, 316 U.S. at 495, 62 S. Ct. at 1176. The resulting standard from *Brillhart* was a discretionary standard. Following *Brillhart*, the Supreme Court decided, among other cases, *Colorado River Water Conservation Dist. v. United States*, 316 U.S. 491, 62 S. Ct. 1173, 96 S. Ct. 1236 (1976) and *Moses H. Cone Memorial Hospital v. Mercury Contr. Corp.*, 460 U.S. 1, 103 S. Ct. 9927, 74 L.Ed.2d 765 (1983). Both cases set forth that a court should decline to exercise jurisdiction only where exceptional circumstances are present, articulating a non-exhaustive list of factors for consideration. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 283-87, 115 S. Ct. 2137, 2141-42, 132 L.Ed.ed 214 (1995) (citing same). The Court later sought to reconcile the prior cases and set forth in *Wilton*, that "[i]n the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." 515 U.S. at 288, 115 S. Ct. at 2143. However, the Court did not "attempt . . . to delineate the outer boundaries of that discretion in other cases, for example, cases raising issues of federal law or cases in which there

are no parallel state proceedings." *Id.* at 290, 2144. Following *Wilton*, the circuits have taken several different approaches. The Second Circuit has stated that *Wilton* set forth that abstention would be appropriate "where another suit is pending in a state court presenting the same issues, not governed by federal law, between the same parties," and "the questions in controversy . . . can better be settled in the proceeding pending in the state court." *Niagara Mohawk Power Corp. v. Hudson River Black River Regulating Dist.*, 673 F.3d 84, 105-06 (2d Cir. 2012) (citing *Wilton*, 515 U.S. at 282, 115 S.Ct. 2137 (internal quotation marks omitted) (applying abstention criteria and finding abstention was improper because a judgment by the district court would settle the legal issues between the parties and finalize the controversy). However, the Third Circuit has not definitively resolved the issue when an action involves claims requesting compensatory, economic and punitive remedies as well as injunctive and equitable relief. This Court previously addressed a request for declaratory judgment in an insurance coverage case where injunctive relief was additionally requested and no federal issue was implicated. *Hartford Ins. Co. Of the Southeast v. John J.*, 848 F. Supp. 2d 506 (M.D.Pa 2012). I declined to exercise jurisdiction but adopted the "heart of the matter approach." *Id.* at 513. Using the "heart of the matter approach", "a court will look to whether the nucleus of an action is declaratory or coercive[2], and will exercise jurisdiction over the whole if the core is coercive, and

---

[2] "Coercive" claims refer to those "seeking compensatory damages or injunctive relief." *Hartford Ins. Co.*, 848 F. Supp. at 511 n.1 (citing *Perelman v. Perelman*, 688 F.Supp.2d 367, 372 (E.D.Pa.2010).

will exercise discretion as to both claims if it is declaratory." *Id.* at 511; *See Rarick v. Federated Service Insurance Company*, — F. Supp. 3d —, 2015 WL 5677295 *4 (E.D. Pa. September 28, 2015) (applying the "heart of the matter" approach when both declaratory and coercive claims were involved).

In *Reifer v. Westport Ins. Corp.*, 751 D. 3d 129 (3d Cir. 2014), the Third Circuit set forth a two-part test for consideration when faced with a declaratory judgement request. First, a determination is to made whether there is are pending state court proceedings, *Id.* at 144, stating "the existence or non-existence of pending parallel state proceedings is but one factor for a district court to consider." *Id.* The second step involves exploring the following factors:

1. the likelihood that a federal court declaration will resolve the uncertainty of obligation which gave rise to the controversy;
2. the convenience of the parties;
3. the public interest in settlement of the uncertainty of obligation;
4. the availability and relative convenience of other remedies;
5. a general policy of restraint when the same issues are pending in a state court;
6. avoidance of duplicative litigation;
7. prevention of the use of the declaratory action as a method of procedural fencing or as a means to provide another forum in a race for res judicata; and

> 8. (in the insurance context), an inherent conflict of interest between an insurer's duty to defend in a state court and its attempt to characterize that suit in federal court as falling within the scope of a policy exclusion.

Id. at 146. *See Nationwide Agribusiness Inc. Co. v. Sheriff*, 2015 WL 365679 (M.D. January 27, 2015) (applying the *Reifer* factors). The *Reifer* court stated that the list was non-exhaustive and "other relevant case law or considerations could be considered." *Reifer*, 751 D. 3d at 146. Guided by the above, Defendants' argument that the current action should be stayed pending the Lackawanna County Court of Common Pleas case will be addressed.

In her Amended Complaint, Ms. Knick has requested relief in the form of economic, compensatory, and punitive damages, as well as injunctive and equitable relief. The Amended Complaint alleges federal constitutional claims under 42 U.S.C. § 1983 in Counts I-IV. These claims fall under the jurisdiction of this Court as federal questions pursuant to 28 U.S.C. §§ 1331 and 1343. Count V is a claim for relief pursuant to the Declaratory Judgment Act. Declaratory Judgment actions do not fall under the same jurisdictional jurisprudence because relief is sought under is 28 U.S.C. §§ 2201-2202 and implemented through Rule 57 of the Federal Rules of Civil Procedure which states that the "existence of another adequate remedy does not preclude a declaratory judgment." Fed. R. Civ. P. 57.

Courts are constrained in the Declaratory Judgment context to only act in the face of cases or

controversies. All "federal courts, '[have] no jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies." *United States v. Raines*, 362 U.S. 17, 21, 80 S. Ct. 519, 522, 4 L. Ed. 2d 524 (1960). Ms. Knick states that a controversy exists because she "has received from Defendant, Scott Township, Notice of Violation dated April 11, 2013 and October 31, 2014 and consequently her interest in these proceedings is direct, substantial and present and the Enforcement Action undertaken by Scott Township reveals an actual controversy related to the invasion of Plaintiff's constitutionally protected property rights." (*Am. Compl.*, ¶ 45.) Because Ms. Knick's claims in Count I through IV allege violations of her constitutional rights, a case or controversy exists.

In applying the above-factors, it would be inappropriate to stay or dismiss Counts I through IV based on the pending Lackawanna County Court action. The Memorandum and Order issued by the Honorable Terrance Nealon of the Lackawanna County Court appears to indicate that no decision has been rendered on the underlying action filed by Ms. Knick. *Knick v. Scott Township*, 13-CV-2309 (Lacka. Cty.) (Doc. 10-1.)[3] The Defendants argued at

---

[3] Defendants attached a copy of the Memorandum and Order filed by Judge Terrance Nealon of Lackawanna County Court of Common Pleas, to their Motion to Dismiss (Doc. 10.). As a matter of public record, I can take the Memorandum and Order into consideration in deciding the instant motion. *See Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010) (citing *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993)).

the state court level that the action by Ms. Knick was premature and that an attack to the underlying Ordinance had to wait until the Township chose to file civil enforcement proceedings against Ms. Knick. (Doc. 10-1, 15.) Ms. Knick's claims in the current case are premised on the alleged violations of her constitutional rights. Despite her request for a declaratory judgment, her claims in Counts I through V are controlled by federal law and were not a part of her state court filing. Therefore, it would be an abrogation of this Court's jurisdictional obligations to stay these proceedings pending the outcome of the state court action, especially because there is no clarity as to when those proceedings will conclude. Despite my determination to address Ms. Knick's claims in Counts I through IV, as discussed more fully below, I will decline to exercise jurisdiction over the declaratory judgment request and dismiss Count V without prejudice. Additionally, it should be noted that the state action is still pending with regard to Ms. Knick's request for declaratory judgment and injunctive and equitable relief.

B. Section 1983

Section 1983 provides that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen . . . or other person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured, . . ." 42 U.S.C. § 1983. "To establish liability under 42 U.S.C. § 1983, a plaintiff must show that the defendants, acting under color of law, violated the plaintiff's federal constitutional or statutory rights, and thereby caused the complained

of injury." *Elmore v. Cleary*, 399 F.3d 279, 281 (3d Cir. 2005) (citing *Sameric Corp. of Del., Inc. v. City of Phila.*, 142 F.3d 582, 590 (3d Cir. 1998)). "[M]unicipalities and other local government units [are] to be included among those persons to whom § 1983 applies" and municipalities, "can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690-91, 98 S. Ct. 2018, 2035 36, 56 L. Ed. 2d 611 (1978). In *Monell*, the Supreme Court held that a municipality will not be found liable for the unconstitutional acts of a state actor unless the conduct that caused the harm was pursuant to a government policy, custom, or practice. 436 U.S. at 690-91, 98 S. Ct. 2018. Instead, a § 1983 claim against a municipality requires the plaintiff to: (1) identify a policy or custom that deprived him of a federally protected right; (2) demonstrate that the municipality, by its deliberate conduct, acted as the "moving force" behind the alleged deprivation; and (3) establish a direct causal link between the policy or custom and the plaintiff's injury. *Id.*; *See Bd. of Cnty. Comm'rs v. Brown*, 520 U.S. 397, 404, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997).

I. Count I–Fourth Amendment Search

Ms. Knick's first claim alleges that Scott Township "maintain(s) a policy, practice, custom or procedure that its Code Enforcement Officer may effectuate warrantless entry onto the private property of citizens within Scott Township," leading to a

warrantless entry onto Ms. Knick's property on April 10, 2013. (Doc. 9 at ¶ 26.) It has been previously determined that where a particular Amendment "provides an explicit textual source of constitutional protection" against a particular sort of government behavior, "that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims." *Albright v. Oliver*, 510 U.S. 266, 273, 114 S. Ct. 807, 127 L. Ed.2d 114 (1994). The Fourth Amendment to the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Fourth Amendment, applied to the states through the Fourteenth Amendment, applies to state government officials in various capacities. *O'Connor v. Ortega*, 480 U.S. 709, 715, 107 S.Ct. 1492, 94 L.Ed.2d 714 (1987). The Supreme Court stated in *Michigan v. Tyler*, 436 U.S. 499, 504, 98 S. Ct. 1942, 1947, 56 L. Ed. 2d 486 (1978), that '[t]he decisions of this Court firmly establish that the Fourth Amendment extends beyond the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits or instrumentalities of crime." In *Camara v. Municipal Court of the City and Cty of San Francisco*, 387 U.S. 523, 87 S. Ct. 1727 (1967), an apartment tenant challenged a complaint filed against him for

disallowing entry to a municipal inspector attempting to inspect the apartment for code compliance. The Court held that such searches, permitted under the challenged municipal law, *i.e*, warrantless inspection of a residence, "are significant intrusions upon the interests protected by the Fourth Amendment, [and] that such searches when authorized and conducted without a warrant procedure lack the traditional safeguards which the Fourth Amendment guarantees to the individual." *Id.* at 534, 1733. In *See v. City of Seattle*, 387 U.S. 541, 542, 87 S. Ct. 1737, 1739, 18 L. Ed. 2d 943 (1967), the Court reiterated the holding in *Camara* that "the Fourth Amendment bars prosecution of a person who has refused to permit a warrantless code-enforcement inspection of his personal residence" and extended *Camara*'s protections to commercial structures.

Turning to Ms. Knick's claim, a Fourth Amendment inquiry is a "two-part inquiry: first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?" *California v. Ciraolo*, 476 U.S. 207, 211, 106 S. Ct. 1809, 1811, 90 L. Ed. 2d 210 (1986) (citing *Katz v. U.S.*, 389 U.S. 347, 360, 88 S.Ct. 507, 516, 19 L.Ed.2d 576 (1967); *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct. 2577, 2580, 61 L.Ed.2d 220 (1979)). It can not be disputed that Ms. Knick had a subjective expectation of privacy in her property. There were "No Trespassing" signs posted at intervals as well as stone walls and other natural boundaries surrounding her property. However, a Fourth Amendment violation also requires there be a recognized objective expectation of privacy. In *Oliver v. U.S.*, 466 U.S. 170, 178, 104 S. Ct. 1735, 1741, 80 L. Ed. 2d 214 (1984), the

Court reaffirmed that "an individual may not legitimately demand privacy for activities conducted out of doors, in fields, except in the area immediately surrounding the home." (citing *Hester v. U.S.*, 265 U.S. 57, 44 S. Ct. 445, 68 L. Ed. 898 (1924)). Explaining further, the Court stated that:

> open fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields. Moreover, as a practical matter these lands usually are accessible to the public and the police in ways that a home, an office, or commercial structure would not be. It is not generally true that fences or "No Trespassing" signs effectively bar the public from viewing open fields in rural areas. . . For these reasons, the asserted expectation of privacy in open fields is not an expectation that "society recognizes as reasonable.

466 U.S. at 179. Therefore, a property owner should not have a reasonable expectation of privacy in open fields.

Defendants argue that Ms. Knick's Fourth Amendment unlawful search claim should be dismissed because the language of the ordinance provides: "[t]he Code Enforcement Officer and/or his/her agents and representatives may enter upon property within the Township for the purposes of determining the existence of and location of any cemetery, in order to ensure compliance with the

terms and provisions of this Ordinance." (Doc. 14 at 7.) In countering Defendants' position, Ms. Knick relies solely on *Camara* in support of the claimed violation of her Fourth Amendment rights. (Doc. 15 at 6.) However, to place such reliance on the case is inappropriate. While *Camara* clearly provides protection for an individual in their home and *See* extends such protection to commercial structures, the area Ms. Knick states was subject to a search was the approximately ninety acres of land she owns, with no specifics as to the precise location. She does not state that there was entry into her home nor to the curtilage of her home. As addressed above, Scott Township can be held liable pursuant to § 1983 under *Monell* only where there was a direct link or nexus between the policy or custom of the municipality and a constitutional deprivation. Because Ms. Knick has not plead a claim upon which relief can be granted, namely she has not stated a constitutional deprivation under the Fourth Amendment, Scott Township can not be liable.

Ms. Knick fails to state a claim under the Fourth Amendment for an unconstitutional search of her property and therefore, Count I shall be dismissed.

II. Count II–Fourth Amendment–Failure to Train

Defendants seek dismissal of Ms. Knick's failure to train claim against Scott Township. Ms. Knick alleges that by failing to train and/or "inadequately training its Code Official as to the law with regard to the necessity for obtaining an Administrative warrant prior to conducting an inspection of private property" Scott Township violated her "individually constitutionally protected rights." (*Am. Compl.*, ¶ 30.)

Ms. Knick states the failure to train led to "a deliberate indifference to the Constitutional rights of the citizens of Scott Township, including Plaintiff." (*Id.* at ¶ 31.)

"[A] municipality's failure to properly train its employees and officers can create an actionable violation of a party's constitutional rights under § 1983." *Reitz v. County of Bucks*, 125 F.3d 139, 145 (3d Cir.1997) (citing *City of Canton v. Harris*, 489 U.S. 378, 388, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989)). "In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983." *Connick v. Thompson*, 563 U.S. 51, 131 S. Ct. 1350, 1359, 179 L. Ed. 2d 417 (2011). Only where a municipality's failure to train its employees in a relevant respect evidences a "deliberate indifference" to the rights of its inhabitants can such a shortcoming be properly thought of as a city "policy or custom" that is actionable under § 1983. *City of Canton, Ohio v. Harris*, 489 U.S. 378, 389, 109 S. Ct. 1197, 1205, 103 L. Ed. 2d 412 (1989). "Failure to train . . . municipal employees can ordinarily be considered deliberate indifference only where the failure has caused a pattern of violations." *See Berg v. County of Allegheny*, 219 F.3d 261, 276 (3d Cir. 2000) (per curiam) (citing *Bd. of Cnty. Comm'rs*, 520 U.S. at 408-09). To attach liability to a municipality, the identified deficiency in the training program must be closely related to the ultimate injury. *Canton*, 489 U.S. at 91. And, as the Supreme Court emphasized "[a] municipality's culpability for a deprivation of rights is at its most

tenuous where a claim turns on a failure to train." *Connick*,131 S. Ct. at 1359.

Scott Township could be liable under § 1983 if they failed to train Ferraro and that failure resulted in a violation of Ms. Knick's Fourth Amendment rights. However, because Ms. Knick has failed to plead sufficient facts that could give rise to a Fourth Amendment violation, her claim for failure to train against such alleged violative behavior must also fail. Therefore, Ms. Knick's claim against Scott Township alleging failure to train its Code Enforcement Officer will be dismissed for failure to state a claim upon which relief can be granted.

Ms. Knick seeks punitive damages against Scott Township in her requested relief under Count II. (*Am. Compl.*) Defendants argue that Ms. Knick is not entitled to punitive damages on her claims against Scott Township. (Doc. 10, ¶¶ 46-52.) The Third Circuit has stated "a municipality is immune from punitive damages under 42 U.S.C. § 1983," *Smith v. Borough of Dunmore*, 633 F.3d 176, 183 (3d Cir. 2011) (citing *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271, 101 S.Ct. 2748, 69 L. Ed.2d 616 (1981)). Ms. Knick has failed to state a claim under Count II that would permit her to be awarded punitive damages against Scott Township.

III. Count III–Fourth and Fourteenth Amendment Claims Against Ferraro

Ferraro entered on to Ms. Knick's property on April 10, 2013 and did so under color of state law. (*Am. Compl.*, ¶¶ 35-36.) Ms. Knick alleges this entry on to her property was in violation of the Fourth and

Fourteenth Amendments to the United States Constitution, resulting in liability under § 1983. (*Id.* at ¶ 37.) Ms. Knick further alleges that Ferraro's actions were "willful, malicious, and/or were made in reckless disregard of Plaintiff's civil rights" therefore requesting punitive damages. (*Id.* at ¶ 39.) Defendants seeks dismissal of Ms. Knick's claims against Ferraro.

Despite raising the issue for the first time in their reply brief, Defendants argue Ferraro should not be named in his official capacity because Ms. Knick's complaint already names Scott Township with regard to her Fourth Amendment claim (Count I of the Amended Complaint). (Doc. 16, 7 n. 2.) In *Kentucky v. Graham*, 473 U.S. 159, 165 66, 105 S. Ct. 3099, 3105, 87 L. Ed. 2d 114 (1985), the Supreme Court set forth the difference in personal versus official capacity suits. When suing in an individual capacity, "[p]ersonal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law; where "[o]fficial-capacity suits, in contrast, 'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" *Id.* at 165-66 (citing *Monell* 436 U.S. at 690, n. 55, 98 S.Ct. at 2035, n. 55.). "[A] judgment against a public servant 'in his official capacity' imposes liability on the entity that he represents provided, of course, the public entity received notice and an opportunity to respond." *Brandon v. Holt*, 469 U.S. 464, 471-72 72, 105 S. Ct. 873, 878, 83 L. Ed. 2d 878 (1985). Therefore, Ms. Knick's claim against Ferraro in his official capacity shall be dismissed. Even if she were to state a claim upon which relief could be granted, a successful suit against Ferraro in his official capacity

would impose liability on Scott Township and is therefore, redundant. The claims made in Count III against Ferraro in his official capacity shall be dismissed.

Defendants additionally argue that Ferraro is entitled to qualified immunity for claims made against him in an individual capacity. (Doc 10 at ¶ 45; Doc. 14, 10.) A defendant official may be entitled to qualified immunity or a good faith, affirmative defense. *Harlow v. Fitzgerald*, 457 U.S. 800, 815, 102 S. Ct. 2727, 2736, 73 L. Ed. 2d 396 (1982). The defense has both an objective and a subjective aspect, with the objective aspect involving a "presumptive knowledge of and respect for 'basic, unquestioned constitutional rights.'" *Id.* at 815, 2736 (quoting *Wood v. Strickland*, 420 U.S. 308, 322, 95 S. Ct. 992, 1001, 43 L. Ed.2d 214 (1975)). "Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Taylor v. Barkes*, 135 S. Ct. 2042, 2044, 192 L. Ed. 2d 78 (2015) (quoting *Reichle v. Howards*, 132 S.Ct. 2088, 2093, 182 L.Ed.2d 985 (2012)). "In considering the applicability of qualified immunity, courts engage in a two-pronged examination[:] [f]irst, a court must decide 'whether the facts that a plaintiff has . . . shown make out a violation of a constitutional right'" and "second, the court must determine 'whether the right at issue was 'clearly established' at the time of defendant's alleged misconduct.'" *Spady v. Bethlehem Area Sch. Dist.*, 800 F.3d 633, 637 (3d Cir. 2015) (citing *Pearson v. Callahan*, 555 U.S 233, 232, 129 S.Ct. 808, 172 L.Ed.2d 565 (2009)). "Courts may begin their consideration with either prong." *Pearson*, 555 U.S at 236. "To be clearly established, a right

must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Reichle*, 132 S. Ct. at 2093, 182 L. Ed at 985. "[E]xisting precedent must have placed the statutory or constitutional question beyond debate" for a right to be clearly established. *Id.* The Supreme Court does "not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Taylor*, 135 S. Ct. at 2044.

Ms. Knick states Ferraro conducted a search of her property on April 10, 2013. (*Am. Compl.*, ¶ 18.) Ms. Knick has not pled facts with regard to the area he searched nor that the search was in any way contrary to the rights protected under the Fourth Amendment. As discussed above, the Fourth Amendment does not protect against the entry of an official on to open fields. "An officer conducting a search is entitled to qualified immunity where clearly established law does not show that the search violated the Fourth Amendment." *Pearson*, 555 U.S. at 243-44, 129 S. Ct. at 822. The facts alleged regarding an entry onto the property of Ms. Knick do not rise to the level of a plausible Fourth Amendment violation. Additionally, Ferraro was acting pursuant to the Ordinance. The Ordinance provided for his entry onto property within Scott Township to ensure compliance with the mandates prescribed. (Doc. 14-1.)[4] Therefore, it is reasonable for him to believe that his conduct

---

[4] Because I may consider "undisputedly authentic" documents when the plaintiff's claims are based on the documents and the defendant has attached copies of the documents to the motion to dismiss, the text of the Ordinance will be considered. *Pension Benefit Guar.*, 998 F.2d at 1196.

complied with the law and thus, Ferraro should be entitled to qualified immunity.

With regard to Ms. Knick's request for punitive damages against Ferraro, "[p]unitive damages may be awarded in a § 1983 action only where 'the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.'" *Smith v. Cent. Dauphin Sch. Dist.*, 419 F. Supp. 2d 639, 649 (M.D. Pa. 2005) (citing *Smith v. Wade*, 461 U.S. 30, 56, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983)). Ms. Knick has failed to plead any facts regarding evil motive or intent and rather simply states that "Defendant Ferraro's actions as complained of, were willful, malicious, and/or were made in reckless disregard of Plaintiff's civil rights." (*Am. Compl.*, ¶ 39.) As stated above, "mere conclusory statements will not do." *Fowler*, 578 F.3d at 210. Ms. Knick has not pled any factual allegations to substantiate the conclusory statement in the Amended Complaint and therefore, she has failed to state a claim upon which the requested relief can be granted. Ms. Knick's claims against Ferraro both in his official and individual capacity shall be dismissed.

IV. Count IV–First, Fourth, Fifth and Fourteenth Amendment Claims

Ms. Knick alleges that Scott Township enacted "special legislation" when they enacted the Ordinance, and the enactment of the Ordinance was accomplished in retaliation for the exercise of her First Amendment Rights. (*Am. Compl.*, ¶ 41.) The Ordinance is also alleged to be violative of Ms. Knick's rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. (*Id.*) Ms. Knick states the

Ordinance is "illegal, unconstitutional and without force of law." (*Id.*) Count IV of the Amended Complaint provides several overlapping alleged violations of her constitutional rights. Defendants have moved to dismiss all of Count IV, arguing Ms. Knick has failed to plead sufficient facts to withstand their 12(b)(6) challenge. The claims are addressed below in the order raised, however, I agree with Defendants that Count IV of the Amended Complaint fails to state a claim upon which relief can be granted, and therefore, shall be dismissed.

a. Ordinance Vague

Ms. Knick first alleges that the Ordinance's provisions are vague. (*Am. Compl.*, ¶ 41(b)). In support of her allegation, Ms. Knick, states that the Ordinance contains "no objective criteria to define the existence of a cemetery or burial ground." (Doc. 15 at 12.) A void-for-vagueness challenge requires a court to ensure fairness in a statute or standard so as not to be so vague that a "party would not know the conduct is prohibited." *Borden v. Sch. Dist. of Twp. of E. Brunswick*, 523 F.3d 153, 166 (3d Cir. 2008); *See also San Filippo v. Bongiovanni*, 961 F.2d 1125, 1136 (3d Cir. 1992). Thus, a statute is unconstitutionally vague when "men of common intelligence must necessarily guess at its meaning." *Borden*, 523 F.3d at 166-67 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 607, 93 S.Ct. 2908 (1973)) (citations omitted). The statute or standard is reviewed on a case-by-case basis, and "the party opposing the statute or standard must show that it is vague as applied to him." *Borden*, 523 F.3d at 167; *San Filippo*, 961 F.2d at 1136. Additionally, "in the civil context, statutes need not be as precise as in the criminal context and are, therefore, less likely

to be invalidated under a void-for-vagueness challenge." *Borden*, 523 F.3d at 167; *San Filippo*, 961 F.2d at 1135. In *Town of McCandless v. Bellisario*, 709 A. 2d 379, 381, 551 Pa. 83,87 (Pa. 1997), the Pennsylvania Supreme Court set forth that municipal ordinances that do "not provide for imprisonment upon conviction or failure to pay a fine or penalty . . . are not Penal laws." The language of the Ordinance relating to penalties for non-compliance provides:

> 7.) **Violations/Penalties/Enforcement** – Any person or owner who violates or permits a violation of the Ordinance, upon being found liable therefore in a civil enforcement proceeding before a District Justice or Magisterial District Justice, shall pay a fine and/or penalty of not less than Three Hundred ($ 300.00) Dollars nor more than Six Hundred ($ 600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense. In any case where penalty for the violation has not been timely paid, and the person against whom the penalty is imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed including additional reasonable attorney's fees incurred by the Township in any enforcement proceedings. If the violator neither pays nor timely appeals the judgment, once final, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

> Nothing contained herein shall preclude the Township and/or Code Enforcement Officer from instituting any other appropriate civil or equitable proceedings to restrain, correct or abate a violation of this Ordinance as may be allowed for under any and all appropriate laws, statutes, Ordinances and/or regulations.

(Doc. 14-1 at 2.) The Ordinance does not provide for the possibility of imprisonment for failure to pay or for noncompliance and is strictly limited to civil and equitable remedies. Ms. Knick argues that the "lack of specific objective criteria in the Scott Township 'Cemetery Ordinance' creates a law so indefinite as to allow arbitrary and discriminatory enforcement and the Ordinance fails Constitutional compliance." (Doc. 15 at 12.) Ms. Knick relies on *Giaccio v. Pennsylvania*, 382 U.S. 399, 86 S. Ct. 518, 15 L. Ed.2d 447 (1966), for the principles of constitutional compliance of a statute or standard. (Doc. 15 , 12.) However, Ms. Knick fails to address how these principles should be applied in the current case, despite asserting that the Ordinance fails to comport. (*Id.*) In *Giaccio*, the Supreme Court invalidated a Pennsylvania statute allowing a jury to assess whether a defendant who is acquitted on the underlying offense, should be liable for costs; and permitted incarceration of the defendant until costs are paid. *Id.* at 401. Because there were no guidelines for how a jury was to make the determination of whether an acquitted Defendant was assessed costs and subject to possible incarceration, the Court deemed the statute too vague to be enforced stating:

> Certainly one of the basic purposes of the Due Process Clause has always been to

> protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce.

Id. at 403.[5] The Ordinance in the current case does not suffer from the same infirmities. Ms. Knick argues that the Ordinance "essentially allows the officials of Scott Township to point to any parcel of land, claim it as a cemetery and then endeavor to enforce the provisions of Ordinance." (Doc. 15 , 12.) Despite this allegation, the Ordinance contains a definition section that provides the definitions for a Burial Place as "A portion of ground either occupied by a tomb or grave or set apart for a tomb or grave for burial of the dead." (Doc. 14-1, 1.) Additionally, a Cemetery is defined by

---

[5] Ms. Knick additionally cites to *City of Chicago v. Morales*, 527 U.S. 41, 52, 119 S. Ct. 1859, 144 L.Ed.2d 67 (1999) (holding that a statute criminalizing the failure to disperse after being warned by a police officer that the individual was impermissibly loitering with a gang member, without further defining loitering or prohibited conduct, was void for vagueness) and *Tucson Woman's Clinic v. Eden*, 379 F. 3d 531, 554 (9th Cir. 2004) (invalidating a provision of an abortion clinic regulation that required providers to "ensure that a patient is afforded the following rights, and is informed of these rights: [ ] To be treated with consideration, respect, and full recognition of the patient's dignity and individuality" as unconstitutionally vague and "too subjective for providers to know how they should behave in order to comply, as well as too vague to limit arbitrary enforcement.") (Doc. 15, 12.) The Ordinance does not suffer from the same lack of defining language and therefore the provisions at issue are distinguishable.

the Ordinance as "A place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings." (*Id.*) Ms. Knick argues that because the Ordinance does not require "a reservation in the chain of title, registration with agencies of the Commonwealth of Pennsylvania, physical indicia of the existence of a cemetery in the form of tombstones and the conducting or record of conducting internments of deceased humans," the Ordinance is unconstitutionally vague. (Doc. 15, 12.) I find the Ordinance sufficiently provides for the definition of such areas of land and therefore, the Ordinance is not void-for-vagueness. The parameters of the regulated area are sufficiently defined. Ms. Knick has failed to allege any facts to demonstrating how the Ordinance is vague as applied to her property and to make her claim that the Ordinance is too vague plausible.

b. Penal Regulation–Ex Post Facto

Ms. Knick contends that the Ordinance "creates a retroactive penal regulation regarding private property in violation of the prohibition against ex post facto laws." (*Am. Compl.*, ¶ 41(b).) Neither party has expanded on this alleged deprivation in their briefing. *See* LR 7.6 of the Local Rules for the Middle District of Pennsylvania. However, as I set forth above, the Pennsylvania Supreme Court has held that a municipal ordinance that does "not provide for imprisonment upon conviction or failure to pay a fine or penalty . . . [is] not [a] Penal law." *Town of McCandless*, 709 A. 2d at 381, 551 Pa. at 87. Therefore, Ms. Knick has failed to alleged sufficient facts to state a claim that the Ordinance is a penal

ordinance that provides for retroactive penal regulation. The conclusory statement does not provide any basis for relief.

c. Fourteenth Amendment Challenge

Ms. Knick's initial claims or bases alleged unconstitutionality in Count IV will be considered a facial challenge to the Ordinance. When asserting a facial challenge, a party "seeks to vindicate not only his own rights, but those of others who may also be adversely impacted by the statute in question." *CMR D.N. Corp. v. City of Philadelphia*, 703 F.3d 612, 623 (3d Cir. 2013) (quoting *City of Chi. v. Morales*, 527 U.S. 41, 55 n. 22, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999)). "In a facial challenge, the plaintiff does not seek to establish that the law cannot be applied to him; rather, he or she must show that 'no set of circumstances exists under which the [challenged] Act would be valid.'" *CMR D.N. Corp.*, 703 F. 3d at 623 (quoting *United States v. Mitchell*, 652 F.3d 387, 405 (3d Cir.2011)) (citations omitted).

Ms. Knick alleges that the provisions of the Ordinance are "unreasonable and have no rationale [sic] relation to the promotion of the public health and safety and exist as an improper exercise of the Township Police power." (*Am. Compl.*, ¶ 41(c).) Such a statement concedes that the Ordinance should be subject to rational basis review, however, Ms. Knick has failed to expand on her claim that the enactment of the Ordinance bears no rational relationship to the public health and safety of Scott Township residents in her brief in opposition. Therefore, the Ordinance will be considered under rational basis review. "Under rational basis review, "a statute withstands a

substantive due process challenge if the state identifies a legitimate state interest that the legislature could rationally conclude was served by the statute." *Alexander v. Whitman*, 114 F.3d 1392, 1403 (3d Cir. 1997) (quoting *Sammon v. New Jersey Bd. Of Medical Examiners*, 66 F. 3d 639, 646 (3d Cir. 1995)). The Third Circuit has cautioned that "a court engaging in rational basis review is not entitled to second guess the legislature on the factual assumptions or policy considerations underlying the statute . . . The sole permitted inquiry is whether the legislature rationally might have believed the predicted reaction would occur or that the desired end would be served." *Sammon*, 66 F.3d at 645.

The Ordinance on its face states that Scott Township, through the Second Class Township Code, grants the Supervisors the ability "to adopt Ordinances in which general or specific powers of the Township may be exercised in order to promote the health, safety and welfare of its residents." (Doc. 14-1, 1.) The Ordinance further states "the Board of Supervisors of Scott Township believes that regulating cemeteries within the Township serves in the best interest of the Township." (*Id.*) The Supervisors stated their belief in the text of the Ordinance that the enactment of the Ordinance was in furtherance of the health, safety and welfare of the residents of Scott Township. Because resident health, safety and welfare are legitimate state interests, it is rational to believe that regulating places of burial would serve that need, and therefore, the Ordinance survives rational basis review.

Ms. Knick raises various other challenges to the Ordinance as unconstitutional as-applied to her and, as warranted, those claims are addressed below.

d. Public Taking

Ms. Knick sets forth a claim that the provision of the Ordinance that states that "all cemeteries within the Township shall be kept open and accessible to the general public during day light hours" amounts to a "public taking without just compensation." (*Am. Compl.*, ¶ 41(d).) This challenge is a facial attack to the Ordinance.

The Takings Clause of the Fifth Amendment prohibits the federal government from taking private property for public use without providing just compensation, *see* U.S. Const. amend. V, and the Takings Clause applies to state action through the Fourteenth Amendment. *See Am. Express Travel Related Servs., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 370 (3d Cir. 2012). Takings claims generally fall into two categories: physical and regulatory. *See Yee v. City of Escondito*, 503 U.S. 519, 522-23, 112 S. Ct. 1522, 118 L. Ed. 2d 153 (1982). A physical taking occurs when there is either a condemnation or a physical appropriation of property. *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322, 122 S. Ct. 1465, 152 L. Ed. 2d 517 (2002). By contrast, a regulatory taking occurs when "government regulation of private property [is] . . . so onerous that its effect is tantamount to a direct appropriation or ouster." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005) (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S. Ct. 158, 67 L. Ed. 322 (1922)). A regulation violates the Takings Clause "where

government requires an owner to suffer a permanent physical invasion of her property," or where the owner is completely deprived of "all economically beneficial use" of the property. *Id.* at 538. (internal citations omitted).

The type of takings inquiry depends on the type of attack leveled against the government action. "The Supreme Court has held that an as-applied Fifth Amendment Just Compensation Takings claim against a municipality's enforcement of a zoning ordinance is not ripe until (1) 'the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue' (the 'finality rule'), and (2) the plaintiff has unsuccessfully exhausted the state's procedures for seeking 'just compensation,' so long as the procedures provided by the state were adequate." *Cnty. Concrete Corp. v. Town of Roxbury*, 442 F.3d 159, 164 (3d Cir. 2006) (citing *Williamson County Regional Planning Com. v. Hamilton Bank*, 473 U.S. 172, 186, 194-95, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985)). However, when a facial attack is made to an ordinance, *i.e.*, "a claim that the mere enactment of a regulation either constitutes a taking without just compensation, or a substantive violation of due process or equal protection", a "final decision" is not necessary." *Cnty Concrete Corp.*, 442 F. 3d at 164. This is because "when a landowner makes a facial challenge, he or she argues that any application of the regulation is unconstitutional; for an as-applied challenge, the landowner is only attacking the decision that applied the regulation to his or her property, not the regulation in general.'" *Id.* (quoting *Eide v. Sarasota County*, 908 F.2d 716, 724 n. 14 (11th Cir.1990)).

Ms. Knick alleges that the Ordinance is a taking as enacted. However, she fails to plead any facts that would make her claim plausible that the enactment of the Ordinance amounts to a taking. The broad statement that the Ordinance "exists as an effort at public taking without compensation" and the reiteration of the Ordinance's language does not suffice to state a claim. (*Am. Compl.*, ¶ 41(d).)

Other than to state that the "application of the Ordinance to Plaintiff's private property actually creates a nuisance by mandating public access to and across Plaintiff's private property which is otherwise not open to the public," the Amended Complaint contains no allegation regarding an as-applied taking. (*Am. Compl.*, ¶ 41(e).) Therefore, Ms. Knick fails to plead facts that state she has suffered a taking through application of the Ordinance to her property.[6]

e. Nuisance

As addressed above, Ms. Knick appears to conflate a nuisance with an as-applied taking, however, she fails to put forth how the value of her property is regulated or diminished by the application of the

---

[6] Even if Ms. Knick were to plead sufficient facts to demonstrate an as-applied taking, her claim would likely fail due to the ripeness doctrine which "serves to determine whether a party has brought an action prematurely and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine." *Cnty Concrete Corp.*, 442 F. 3d at 164 (citing *Khodara Envtl., Inc. v. Blakey*, 376 F. 3d. 187, 196 (3d Cir. 2004)) (citations omitted). Ms. Knick has pled no facts about the finality of a determination regarding application of the Ordinance to her property and notably stated in her brief in opposition that "any effort by Scott Township to enforce the provisions of the "Cemetery Ordinance" against Knick property is unlikely." (Doc. 15, 11.)

Ordinance. Therefore, construing the nuisance language to allege an as-applied Taking, Ms. Knick has failed to plead facts to support her allegation that the "application of the Ordinance to Plaintiff's private property actually creates a nuisance by mandating public access to and across Plaintiff's private property which is otherwise not open to the public." (*Am. Compl.*, ¶ 41(e).)

f. Due Process and Retaliation

The Amended Complaint alleges that Defendant's enactment of the Ordinance and their attempt at enforcement "bear no relationship to the promotion of public health and safety, and both the enactment and enforcement were designed to harass Plaintiff and to otherwise discourage her from further exercise of her First Amendment Rights of Free Speech and Expression." (*Am. Compl.*, ¶ 41(f).) Ms. Knick alleges violations of her Fourteenth Amendment rights to Due Process, and that the action by Defendants was in retaliation for the exercise of her First Amendment Rights.

1. Due Process

Ms. Knick alleges a Fourteenth Amendment claim in Count IV. The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that a state shall not "deprive any person of life, liberty, or property, without due process of law; . . ." U.S. Const. amend. XIV, § 1. Due process under the Fourteenth Amendment has both "substantive and procedural components." *Evans v. Sec'y Pa. Dep't of Corr.*, 645 F.3d 650, 658 (3d Cir. 2011).

A. Substantive Due Process

In Count IV, Ms. Knick alleges a violation of her substantive due process rights with regard to her real property. "The substantive component of the Due Process Clause limits what government may do regardless of the fairness of procedures that it employs." *Evans*, 645 F.3d at 659 (citing *Boyanowski v. Capital Area Intermediate Unit*, 215 F.3d 396, 399 (3d Cir. 2000)). According to the Third Circuit, "the fabric of substantive due process . . . encompasses at least two very different threads." *Nicholas v. Pa. State Univ.*, 227 F.3d 133, 139 (3d Cir. 2000). The first of these threads applies when a "plaintiff challenges a legislative act." *Id.* The second thread "protects against certain types of non-legislative action," where "deprivation of a property interest is 'arbitrary, irrational, or tainted by improper motive'" *Id.* (quoting *Woodwind Estates, Ltd. v. Gretkowski*, 205 F. 3d 118, 123 (3d Cir. 2000)).

First, Ms. Knick has challenged the enactment of the Ordinance and therefore, challenges a legislative act. "[A] legislative act will withstand substantive due process challenge if the government "identifies a legitimate state interest that the legislature could rationally conclude was served by the statute," although legislative acts that burden certain 'fundamental' rights may be subject to stricter scrutiny." *Nicholas*, 227 F.3d at 139; *Alexander v. Whitman*, 114 F.3d 1392, 1403 (3d Cir.1997) (quoting *Sammon*, 66 F.3d at 645). As stated above, the Ordinance survives rational basis review in that it was purportedly enacted to further the health, safety and welfare of the citizens of Scott Township, and

therefore, Ms. Knick's claim for a substantive due process violation must fail.

As to challenges that fall under the second thread, non-legislative acts, a plaintiff must prove that the interest at issue is "protected by the substantive due process clause and the government's deprivation of that protected interest shocks the conscience." *Chainey v. Street*, 523 F.3d 200, 219 (3d Cir. 2008). The plaintiff must establish "as a threshold matter that he has a protected property interest to which the Fourteenth Amendment due process protection applies." *Nicholas*, 227 F. 3d at 139-40 (quoting *Woodwind Estates*, 205 F. 3d at 118. The Third Circuit has stated that a plaintiff alleges a property interest worthy of substantive due process protection "in situations where the governmental decision in question impinges upon a landowner's use and enjoyment of property." *DeBlasio v. Zoning Bd. of Adjustment*, 53 F.3d 592, 600-01 (3d Cir. 1995), *abrogated on other grounds by United Artists Theatre Cir., Inc. v. Twp. of Warrington*, 316 F.3d 392, 400 (3d Cir. 2003). Ms. Knick has a protected interest in her property. However, that does not end the inquiry. Ms. Knick has failed to plead any facts regarding actions on behalf of Defendants that "shock the conscience." In order to be a violation of substantive due process, a plaintiff must allege how the government action shocks the conscience. Such has not been stated in Ms Knick's Amended Complaint. There have additionally been no facts pled regarding an arbitrary application of the Ordinance to Ms. Knick. The Ordinance was applied as written when the notice of violation was sent and there is nothing contained in the Amended Complaint to substantiate that the Ordinance was applied

arbitrarily to Ms. Knick or that it was not applied to any other citizen of Scott Township. Therefore, Ms. Knick's substantive due process claims shall be dismissed.

B. Procedural Due Process

Ms. Knick alleges broadly that the application of the Ordinance to her property is unconstitutional and because she alleges Fourteenth Amendment violations, a procedural due process claim will be considered. Ms. Knick fails to expand upon her allegation of a violation of procedural due process.

"To state a claim under § 1983 for deprivation of procedural due process rights, a plaintiff must allege that (1) he was deprived of an individual interest that is encompassed within the Fourteenth Amendment's protection of 'life, liberty, or property,' and (2) the procedures available to him did not provide 'due process of law.'" *Hill v. Borough of Kutztown*, 455 F.3d 225, 233-34 (3d Cir. 2006) (citing *Alvin v. Suzuki*, 227 F.3d 107, 116 (3d Cir. 2000)). For purposes of procedural due process, courts look to state law to determine whether a property interest exists. *Dee v. Borough of Dunmore*, 549 F.3d 225, 229 (3d Cir. 2008) (citing *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972) ("Property interests are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law.")). "A procedural due process claim requires . . . consider[ation of] three factors: (1) the private interest affected by the official action; (2) the risk that the plaintiff will suffer an erroneous deprivation through the procedure used and the probable value if any of

additional procedural safeguards; and (3) the government's interest." *Reichley v. Pennsylvania Dep't of Agric.*, 427 F.3d 236, 246 (3d Cir. 2005) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334-35, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

Notwithstanding Ms. Knick's failure to plead sufficient facts for a procedural due process claim, any allegation, even if a cursory statement, of such a deprivation is without merit. Despite Ms. Knick's clear interest in the use and enjoyment of her property, she has pled nothing more than conclusory statements regarding the fact that her property will be adversely affected by the Ordinance.[7] The risk of erroneous deprivation through the procedure, *i.e.*, the issuance of an notice of violation and possible civil enforcement proceedings, used is minimal. The Ordinance specifically lays out that, upon the exercise of enforcement proceedings by Scott Township, she must be found liable for violation of the Ordinance. (Doc. 14-1, 2.) There is an important government interest involved. The Ordinance provides that the adoption of the Ordinance is "in order to promote the health, safety and welfare of its residents." (Doc. 14-1, 1.) The weighing of the factors does not lead to a determination in Ms. Knick's favor. The procedural due process claim shall be dismissed.

2. Retaliation

Ms. Knick alleges that the Ordinance was enacted in retaliation for the exercise of her First Amendment rights. (*Am. Compl.*, ¶¶ 41(f), 47(f).)

---

[7] Ms. Knick has additionally failed to allege facts that there has been a finality of decision with regard to the application of the Ordinance to her property.

A First Amendment retaliation claim requires "(1) constitutionally protected conduct, (2) retaliatory action sufficient to deter a person of ordinary firmness from exercising his constitutional rights, and (3) a causal link between the constitutionally protected conduct and the retaliatory action." *Thomas v. Independence Twp.*, 463 F.3d 285, 296 (3d Cir. 2006) (citing *Mitchell v. Horn*, 318 F.3d 523, 530 (3d Cir. 2003)). Ms. Knick has attended meetings of the Scott Township Supervisors regularly and has confronted the "Supervisors and Administrative Officials with respect to the expenditure of funds, tax revenue issues and various Municipal decisions." (*Am. Compl.*, ¶ 15.) The Supervisors and Officials, including Ferraro, have "expressed their annoyance, aggravation and displeasure, both publicly and privately, regarding Plantiff['s] . . .exercise of her First Amendment Rights." (*Am. Compl.*, ¶ 16.) Ms. Knick alleges that the enactment of the Ordinance and subsequent attempts at enforcement were retaliatory actions in response to her exercise of her First Amendment Rights. (*Id.* at ¶ 41(f).)

The Third Circuit has reiterated that the First Amendment forbids retaliation for speech even about private matters. *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 284 (3d Cir. 2004) (deeming speech addressing private grievances at supervisors' meetings was entitled to First Amendment Protection). *Eichenlaub* further stated that "private speech (unless obscene or fighting words or the like) is still protected on the First Amendment ladder." *Id.* Ms. Knick's statements at Supervisors' meetings would similarly be entitled to First Amendment protection. The first prong of the standard for retaliatory actions has been met.

However, Ms. Knick has failed to plead facts sufficient to state a claim for retaliation against her by Defendants. Ms. Knick simply makes a conclusory statement that "Scott Township enacted "Special Legislation" designed to harass her and to chill her in the exercise of her First Amendment Rights." (Doc. 15, 10.) The Amended Complaint fails to set forth facts how the enactment of the Ordinance was in fact connected to her statements at meetings, nor how the enactment of such would deter a person of reasonable firmness from exercising their rights. Therefore, her claim for First Amendment retaliation shall be dismissed. However, as stated below, Ms. Knick shall be given an opportunity to amend her complaint in order to state a claim for First Amendment Retaliation.

g. Fourth Amendment

Ms. Knick cites her allegation that the Ordinance attempts to "grant to the Township rights to access private property which are violative of the Fourth Amendment of the United States Constitution." (*Am. Compl.*, ¶ 41(g).) This allegation is construed to be a facial challenge to Ordinance with regard to the Fourth Amendment. The Fourth Amendment, applicable to the states through the Fourteenth Amendment, states that "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ." U.S. Const. amend. IV. The controlling question that must be answered is whether there is a "constitutionally protected reasonable expectation of privacy." *Ciraolo*, 476 U.S. at 211, 106 S. Ct. at 1811. As discussed at length

above, there is not a constitutionally protected objective reasonable expectation of privacy in open fields. There is no Fourth Amendment violation as the Ordinance applies to Ms. Knick and to speculate that a situation will arise in Scott Township where a cemetery or burial ground will be alleged to be contained in a residence, the curtilage surrounding a residence or commercial structure, would be inappropriate.

V. COUNT V

1. Declaratory Judgment

As discussed above at length, I have discretion with regard to the exercise of jurisdiction over a request for declaratory judgment. Ms. Knick requests that I issue a Declaratory Judgment deeming the Ordinance unconstitutional. (*Am. Compl.*, ¶ 52(a).) In support of her contention that the Ordinance is unconstitutional, Ms. Knick reiterates the allegations of Count IV.

In determining whether to exercise jurisdiction a court is to consider if a declarative judgment would serve any purpose beyond the underlying claim. *Westfall T.p. v. Darwin Nat. Assur. Co.*, No. 14 CV 1654, 2015 WL 106578, at *7 (M.D. Pa. Jan. 7, 2015). I have stated:

> the question is whether, taking all facts in a light most favorable to the plaintiff, Plaintiff has stated a declaratory relief claim that will serve a useful purpose in clarifying and settling the legal relations in issue, and will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.

and that "[w]hile a party may plead alternative statements of a claim, a district judge may dismiss a claim for declaratory relief if it is duplicative of a contract or other claim." *Id.* Because a declaratory judgment in this case is duplicative of the coercive claims in Ms. Knick's Amended Complaint, I will exercise my discretion to decline to issue a declaratory judgement. Because Ms. Knick has failed to state claims for constitutional violations, I will not issue a further declaratory judgment with regard to the constitutionality of the Ordinance. I will dismiss Count V without prejudice.

Ms. Knick additionally requests a Declaration of Rights, without which she alleges she "will be uncertain of her rights and responsibilities under the law." (*Am. Compl.*, ¶ 46.) As addressed at length above, Ms. Knick has failed to state a claim for constitutional violations, therefore, no further declaration of rights and responsibilities will be issued. Scott Township has yet to institute civil enforcement proceedings against Ms. Knick. Therefore, it would be inappropriate to address rights and responsibilities at this time.

2. Temporary Restraining Order/Preliminary Injunctive Relief

Ms. Knick has additionally requested that a temporary restraining order and preliminary injunctive relief be issued. (*Am. Compl.*, Count V.) The following four factors are to be considered by a court ruling on a motion for a preliminary injunction:

> (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be

> irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

Gerardi v. Pelullo, 16 F.3d 1363, 1373 (3d Cir. 1994). These same factors are used to determine a motion for a temporary restraining order. *Lozano v. City of Hazleton*, 459. F. Supp. 332, 335 (M.D. Pa. 2006).

Ms. Knick alleges in the Amended Complaint that she is "entitled to a Temporary Restraining Order, as well as a Preliminary and Permanent Injunction." (*Am. Compl.* at ¶ 45.) According to Ms. Knick, she "will suffer irreparable injury and will continue to suffer real and immediate threat of irreparable injury as the result of the existence, operation, enforcement and threat of enforcement of the challenged Ordinance" and she has "no adequate or speedy remedy at law." (*Id.* at ¶ 44.) Ms. Knick alleges the harm to her "as a result of Defendants' attempts to enforce an unconstitutional and void Ordinance is substantial" (*Id.* at ¶ 48.); that unless Defendants are enjoined, she will be deprived of her constitutionally protected rights (*Id.* at ¶ 49.); that "no harm or prejudice will result to Defendants if relief is granted" (*Id.* at ¶ 50.); she has no adequate remedy at law (*Id.* at ¶ 51.); and her "right to relief is clear." (*Id.* at ¶ 52.) Ms. Knick has failed to allege facts that demonstrate her entitlement to the relief requested. She has offered nothing more than mere conclusory legal statements. Therefore, I will not grant her request for a Temporary Restraining Order, nor preliminary injunctive relief.

3. Permanent Injunctive relief

Because Ms. Knick's Amended Complaint will be dismissed in its entirety, permanent injunctive relief is not appropriate.

VI. Conclusion

For the above stated reasons, Defendants' motion to dismiss will be granted. However, the Third Circuit has instructed that a district court must permit a curative amendment if a claim is vulnerable to a 12(b)(6) dismissal, unless amendment would be inequitable or futile. *See Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 236 (3d Cir. 2008). Because it is not certain that amendment of Count IV would be futile, Ms. Knick will be permitted one opportunity to amend her pleading to state a claim consistent with this Memorandum. I believe it would be futile to permit amendment of Counts I through III based on the determination that no relief can be granted for the claimed violation of Ms. Knicks's Fourth Amendment rights.

An appropriate order follows.

October 28, 2015
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge

Document 20 Filed 10/29/2015

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ROSE MARY KNICK, Plaintiff, v. **SCOTT TOWNSHIP, et al.,** Defendants,	CIVIL ACTION NO. 3:14-CV-2223 (JUDGE CAPUTO)

ORDER

NOW, this 28th day of October, 2015, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. 10), Counts I through III, is **GRANTED**. These counts are dismissed with prejudice.
2. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. 10), Count IV, is **GRANTED**. Plaintiff has **twenty-one (21) days** from the date of entry of this Order to file an amended pleading. If she fails to do so, the action will be dismissed with prejudice and the case will be closed.
3. Defendants' Motion to Dismiss Plaintiff's Amended Complaint (Doc. 10), Count V, is

GRANTED. This count is dismissed without prejudice.

/s/ A. Richard Caputo
A. Richard Caputo
United States District Court

Document 21 Filed 11/16/2015

UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA

ROSE MARY KNICK Plaintiff vs. SCOTT TOWNSHIP Defendant	CIVIL ACTION – LAW JURY TRIAL DEMANDED NO.: 3:14-CV-02223-ARC [ELECTRONICALLY FILED]

SECOND AMENDED COMPLAINT

AND NOW comes Plaintiff, Rose Mary Knick, by and through her attorney, Frank J. Bolock, Jr., Esquire, who files this Second Amended Complaint against Defendant above-named as follows:

I. INTRODUCTION

1. Plaintiff, Rose Mary Knick, brings this action seeking Declaratory Judgment, Preliminary and Permanent Injunctive Relief, a Temporary Restraining Order and monetary damages arising out of Defendant's violation of the Constitution and laws of the United States. Plaintiff's claim seeking monetary damages to address the deprivation of her civil rights is brought pursuant to 42 U.S.C. Section 1983. Plaintiff alleges that she was subjected to an unlawful search of her property on or about April 10, 2013, in violation of her rights under the Fourth Amendment of the United States Constitution. In addition, Scott Township enacted an ordinance—Ordinance 12-12-20-001—that violates the takings

Clause of the Fifth Amendment both on its face and as-applied because it authorizes a physical invasion and seizure of Plaintiff's private land.

Plaintiff seeks relief in the nature of a Declaratory Judgment declaring Ordinance No. 12-12-20-001 unconstitutional. The Defendant's unlawful actions have caused Plaintiff emotional distress and economic losses. The Plaintiff seeks economic damages, compensatory and punitive damages, attorneys' fees and costs of this action.

II. JURISDICTION AND VENUE

2. This action arises under the Constitution and Laws of the United States, including 42 U.S.C. Section 1983. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. Section 1331 and 1343.

3. The Court is authorized to grant Declaratory Judgment under the Declaratory Judgment Act, 28 U.S.C. Section 2201, 2202 implemented through Rule 57 of the Federal Rules of Civil Procedure, and to issue the Temporary Restraining Order, and the Injunctive Relief request by Plaintiff under Rule 65 of the Federal Rules of Civil Procedure.

4. Venue herein is the proper in this district pursuant to 28 U.S.C. Section 1391(b). All of the acts complained of herein occurred within this judicial district.

III. PARTIES

5. Plaintiff, Rose Mary Knick, is a United States citizen residing at 49 Country Club Road, Scott Township, County of Lackawanna, Commonwealth of Pennsylvania 18433.

6. Defendant, Scott Township, is a political sub-division of the Commonwealth of Pennsylvania, organized and existing in accordance with the laws of Pennsylvania with a designation as a Township of the Second Class. Defendant, Scott Township's principal office is located at 1038 Montdale Road, Scott Township, County of Lackawanna, Commonwealth of Pennsylvania. Scott Township, as a Municipal entity, is capable of being sued under 42 U.S.C. Section 1983, and is subject to the jurisdiction of this Court.

IV. STATEMENT OF FACTS

7. Plaintiff, Rose Mary Knick, is the owner of the real estate located at 49 Country Club Road, Scott Township, County of Lackawanna, Commonwealth of Pennsylvania. The Knick property (hereinafter referred to as "the Premises") is comprised of two parcels intersected by Country Club Road. The Premises consists of approximately 90 acres. The Premises has been continuously owned and occupied by Rose Mary Knick and/or members of her family dating back from 1970 continuing up through the present time. The Premises has been utilized over the years as the primary residence for Rose Mary Knick and members of her family, as a cultivated farmland, grazing area for horses, cattle and other farm animals.

8. At all times relevant hereto the Premises has been posted at regular intervals, "No Trespassing." The Premises is bounded by stonewalls, fences and other boundary markers.

9. Plaintiff, Rose Mary Knick, a conscientious citizen, taxpayer advocate frequently attends meetings of the Scott Township Supervisors and regularly confronts the Scott Township Board of

Supervisors and administrative officials with respect to expenditure of funds, tax revenue issues and municipal decisions.

10. In September 2008, apparently, in response to a citizen inquiry regarding an alleged existence of an ancient burial ground on the Premises, The Scott Township Supervisors and Township Solicitor discussed the issue of the alleged burial ground at several public meetings.

11. In 2008 and early 2009 Plaintiff, Rose Mary Knick, individually and through her then Counsel, Attorney Robert Cecchini, made a Right-To-Know request of the Scott Township Supervisors as to the particulars regarding the suggestion that a burial ground was situate on her property. Rose Mary Knick, individually and through her Counsel, advised the Scott Township Supervisors that there was no designation in the chain of title regarding the Premises regarding the existence of a burial ground or cemetery on the Premises. Further, Plaintiff and her Counsel advised Scott Township that there was no physical evidence of the existence of a burial ground or cemetery on the Premises.

12. Plaintiff has never opened her property to the general public for cemetery viewing, hiking or the like. There is no recorded access easement on her property.

13. In correspondence dated October 23, 2008, Plaintiff, Rose Mary Knick through her Attorney, Robert Cecchini, provided Scott Township through their Solicitor with correspondence confirming that in fact the Premises had no designated burial ground, grave, grave yard or cemetery and further that his

review of the chain of title and other documentation confirmed that there had never been any designation, registration or documentation establishing the existence of a cemetery, burial ground or grave yard on the Premises.

14. In December of 2012, the Scott Township Board of Supervisors, enacted an Ordinance, specifically Ordinance 12-12-20-001, purporting to regulate the existence, operation and maintenance of cemeteries within Scott Township.

15. The Ordinance defines a cemetery as "A place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings."

16. The Ordinance authorizes the Township's "Code Enforcement Officer and/or/his/her agents and representatives" to "enter upon *any* property within the Township for the purposes of determining the existence of and location of any cemetery . . ."

17. The Ordinance states that "All cemeteries within the Township shall be kept open and accessible to the general public during daylight hours."

18. The Ordinance states the "[a]ll cemeteries, whether private or public, and whether existing or established prior to the date of this Ordinance or hereafter created, are subject to" its terms.

19. The Scott Township Board of Supervisors determined they would attempt to impose the provisions and restrictions of Ordinance 12-12-20-001 upon the Plaintiff and Plaintiff's premises.

20. On April 10, 2013, the Scott Township Code Enforcement Officer, following a collective determination by the Township Supervisors, without benefit of permission and without an Administrative warrant, entered onto the Knick premises.

21. On April 11, 2013, Scott Township issued a Notice of Violation confirming that the Township's officers had entered onto the Knick property and alleging that the Knick premises contained a burial ground which existed in violation of the Scott Township Ordinance 12-12-20-001. Plaintiff believes the alleged burial ground consists of a few stones and boulders situated on a portion of Plaintiff's property located approximately 300 yards in from the nearest public roadway. To access the area alleged burial ground by way of the most direct route from the roadway, one must cross a fenced and gated field, and proceed through rough terrain and over a water drainage area made at least in part by a natural spring. The Notice is attached to the Complaint as Exhibit "A" and incorporated herein by reference.

22. The Notice informed Plaintiff she was in violation of the Ordinance, in part because the purported burial ground on her land was not open and accessible to the public.

23. On or about May 7, 2013, Plaintiff, Rose Mary Knick, filed a Complaint in the Court of Common Pleas of Lackawanna County seeking Declaratory and Injunctive Relief requesting that the Court: a) declare the Scott Township Ordinance 12-12-20-001 was unconstitutional, void, ineffective and without force; b) declare that Scott Township is precluded from enforcing said Ordinance against Plaintiff and decree and that the Notice of Violation

dated April 11, 2013 is nullified; c) grant equitable relief in the form of a Special Injunction preliminarily following hearing and permanently thereafter to preclude and enjoin Scott Township from enforcing Ordinance 12-12-20-001; and, d) grant such other and appropriate relief including the award of attorneys' fees.

24. The Plaintiff, Rose Mary Knick, through Counsel provided Defendant, Scott Township, with notice regarding the presentation of an Emergency Motion for Injunctive Relief on or about May 7, 2013 and Scott Township through their Solicitor stipulated and agreed to the entry of an Order which provided:

"ORDER

> AND NOW, this 9th day of May, 2013, upon consideration of the Plaintiff's Emergency Motion for Injunctive Relief, Defendant Scott Township's agreement to withdraw its Notice of Violation dated April 11, 2013, and in accordance with a Stipulation of Counsel for the Parties it is Hereby Ordered that all proceedings by Defendant Scott Township to enforce Ordinance No. 12-12-20-001 against Plaintiff Rose Mary Knick are Stayed pending the resolution of the issues raised in the underlying Complaint seeking Declaratory and Injunctive Relief.
>
> S/Nealon J."

25. A Hearing regarding Plaintiff's Complaint for Declaratory Judgment was eventually conducted by the Court of Common Pleas of Lackawanna County on October 8, 2014. The Court of Common Pleas of

Lackawanna County, the Honorable John Braxton, entered an Order as follows:

"ORDER

AND NOW, this 21st day of October 2014, upon consideration of Plaintiff's Motion for Injunctive Relief/Declaratory Judgment, the applicable law, and argument before this court on the matter, it is hereby ORDERED AND DECREED that this court will render no decision on the matter.

This court finds that it is not the proper venue for this matter, since the case is not in the proper posture for a decision to be rendered on the Plaintiff's requested forms of relief."

BY THE COURT:

Braxton ,SJ.
John Braxton"

26. On October 31, 2014, the Scott Township Supervisors and Scott Township Code Enforcement Officer Carl S. Ferraro issued another Notice of Violation alleging Plaintiff's property contained a burial ground and that Plaintiff was in violation of Scott Township Ordinance 12-12-20-001. The Notice is attached to this Complaint as Exhibit "B" and incorporated herein by reference.

27. This second Notice informed Plaintiff she was in violation of the Ordinance in part because the purported burial ground on her land as not open and accessible to the public.

28. As a consequence of Scott Township's Enforcement Notice of October 31, 2014, Plaintiff filed

a Petition for Contempt in the Court of Common Pleas of Lackawanna County. Following a hearing before the Court of Common Pleas, the Honorable Terrance Nealon presiding denied the Petition for Contempt and entered a Memorandum and Order which essentially lifted the Stay that had previously been entered on May 9, 2013. The Court of Common Pleas of Lackawanna County has not addressed the Plaintiff's claim for Declaratory Relief.

V. CAUSES OF ACTION

COUNT I

CLAIM AGAINST DEFENDANT SCOTT TOWNSHIP FOR A VIOLATION OF PLAINTIFF'S FOURTH AMENDMENT RIGHTS UNDER 42 U.S.C. SECTION 1983

29. Plaintiff, Rose Mary Knick, incorporates by reference the allegations of paragraphs 1 through 28 as though fully set forth herein.

30. Upon information and belief, Defendants Scott Township and Scott Township Board of Supervisors maintain a policy, practice, custom or procedure that its Code Enforcement Officer may effectuate warrantless entry onto the private property of citizens within Scott Township.

31. Scott Township's policy, custom, practice or procedure was the direct cause of the Scott Township's Code Enforcement Officer's action on April 10, 2013, consisting of his warrantless entry onto the private property of the Plaintiff, and as such resulted in the violation of Plaintiff's rights under the Fourth Amendment of the United States Constitution subjecting it to liability under 42 U.S.C. Section 1983.

32. Plaintiff has suffered damages as a result of Defendant Scott Township's unlawful policy, custom, practice or procedure.

WHEREFORE, Plaintiff, Rose Mary Knick, respectfully requests that this Court enter a judgment in her favor:

(a) Awarding her economic damages;

(b) Awarding her compensatory damages;

(c) Awarding her attorneys' fees and costs of this action;

(d) Awarding her punitive damages; and

(e) Granting such other relief as the Court deems necessary and appropriate.

COUNT II

CLAIM AGAINST DEFENDANT SCOTT TOWNSHIP FOR VIOLATION OF PLAINTIFF'S CONSTITUTIONALLY PROTECTED RIGHTS PURSUANT TO THE FOURTH, FIFTH AND FOURTEENTH AMENDMENTS, UNDER 42 U.S.C. SECTION 1983

33. Plaintiff incorporates by reference the allegations of paragraph 1 through 32 as though fully set forth herein.

34. The provisions of the Ordinance require that "all cemeteries within the Township shall be kept open and accessible to the general public during day light hours."

35. The Ordinance defines "cemeteries" to include burial grounds that are "contained on private . . . property."

36. The Ordinance requires private property owners to allow the general public to enter, traverse, and occupy their private land, without compensation, every day of the year. As such, on its face, the Ordinance causes an unconstitutional physical invasion and taking of private property.

37. The Ordinance also causes an unconstitutional physical taking on its face in authorizing the Township's "Code Enforcement Officer and/or his/her agents and representatives" to enter, traverse and occupy private property for the purpose of determining the "existence" of any cemetery, without any provision of compensation to the effected owners.

38. The Ordinance gives the Township an easement across all private land within its jurisdiction which it can utilize at any time on the basis that it is looking for the existence of cemeteries.

39. On its face, the Ordinance provision allowing Township officials to invade and access private land to look for cemeteries eviscerates property owners' fundamental right to exclude others. The provision therefore takes private property in violation of the Takings Clause.

40. Moreover, on its face, the Ordinance gives Township agents a right of entry on private land without cause. It therefore *seizes* real property interests, and/or authorizes a *search* of such lands, in violation of the Fourth Amendment.

41. The Township has applied its Ordinance to Plaintiff's property by physically entering the property and by sending Notices of Violation which declare her property to be subject to the Ordinance, and which further state that she is in violation of the Ordinance in part because her property is not open to the general public.

42. As applied to Plaintiff, the Ordinance effects an uncompensated physical taking of her property by requiring Plaintiff to open her private property to the public, on pain of civil fines and penalties.

43. The Plaintiff has suffered damages as a direct result of the enactment by Scott Township of Ordinance No. 12-12-20-001.

WHEREFORE, Plaintiff, Rose Mary Knick, respectfully requests that this Court enter a judgment in her favor:

(a) Awarding her economic damages;

(b) Awarding her compensatory damages;

(c) Awarding her punitive damages;

(d) Awarding her attorneys' fees and costs of this action; and

(e) Granting such other relief as the Court deems necessary and appropriate.

COUNT III

CLAIM FOR RELIEF PURSUANT TO THE DECLARATORY JUDGMENT ACT DECLARING SCOTT TOWNSHIP ORDINANCE 12-12-20-001 UNCONSTITUTIONAL AND FOR A TEMPORARY RESTRAINING ORDER, AS WELL AS PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AGAINST SCOTT TOWNSHIP

44. Plaintiff incorporates by reference the allegations of paragraph 1 through 43 as though fully set forth herein.

45. Plaintiff, Rose Mary Knick, is entitled to a Temporary Restraining Order, as well as a Preliminary and Permanent Injunction. Defendant, Scott Township is acting and threatening to act under color of state law to enforce the unconstitutional Ordinance 12-12-20-001. Plaintiff will suffer irreparable injury and will continue to suffer real and immediate threat of irreparable injury as a result of the existence, operation, enforcement and threat of enforcement of the challenged Ordinance. Plaintiff has no adequate or speedy remedy at law.

46. Plaintiff, Rose Mary Knick, as owner of the premises, as described herein, has received from Defendant, Scott Township, Notice of Violation dated April 11, 2013 and October 31, 2014, and consequently her interest in these proceedings is direct, substantial and present and the Enforcement Action undertaken by Scott Township reveals an actual controversy related to the invasion of Plaintiff's constitutionally protected property rights.

47. Plaintiff, Rose Mary Knick, requests a Declaration of Rights with respect to the controversy. Without such a Declaration, Plaintiff, Rose Mary Knick, will be uncertain of her rights and responsibilities under the law.

48. Plaintiff asserts that Scott Township Ordinance No. 12-12-20-001 violates the Constitution of the United States of America, the Constitution of the Commonwealth of Pennsylvania and that said Ordinance is illegal, unconstitutional and without force of law in the following respects. Among others:

(a) The public access provisions unconstitutionally takes Plaintiff's property on their face and as-applied.

(b) The provisions of Section 6 of the Ordinance attempting to grant to the Township rights to enter and access private property violates the Takings Clause and the Fourth Amendment of the United States Constitution on their face.

49. The harm to Plaintiff as a result of Defendant's attempt to enforce an unconstitutional and void Ordinance is substantial.

50. Unless Defendant is enjoined or other relief is granted, Plaintiff will be deprived of her constitutionally protected property rights.

51. No harm or prejudice will result to Defendant if relief is granted.

52. Plaintiff has no adequate remedy at law.

53. Plaintiff's right to relief is clear.

WHEREFORE, Plaintiff respectfully requests the following additional relief:

(a) A Declaratory Judgment holding that Scott Township Ordinance 12-12-20-001 is unconstitutional;

(b) A Temporary Restraining Order, Preliminary Injunction and Permanent Injunction prohibiting Defendant, Scott Township, from enforcing the challenged Ordinance;

(c) Awarding her economic damages;

(d) Awarding her compensatory damages;

(e) Awarding her punitive damages;

(f) Awarding her attorneys' fees and costs of this action; and

(g) Granting such other relief as the Court deems necessary and appropriate.

Respectfully submitted,

/s/Frank J. Bolock, Jr., Esquire
Frank J. Bolock, Jr., Esquire
Atty. I.D. No. 29983
212 Front Street,
Clarks Summit, PA 18411
Tel. (570) 585-5600\
Fax (570) 585-5601

Dated: 11/16/2015

Attorney for Plaintiff, Rose Mary Knick

Document 21 Filed 11/16/2015
United States District Court
for the Middle District of Pennsylvania

EXHIBIT A TO SECOND AMENDED COMPLAINT

SCOTT TOWNSHIP

An Historic Community Founded 1840

COMMONWEALTH OF PENNSYLVANIA

1038 MONTDALE RD. SCOTT TOWNSHIP, PA
18447 PHONE: 570-319-1296 • FAX: 570-319-1321

April 11, 2013

****NOTICE OF VIOLATION****

Rose Knick
49 Country Club Rd
Scott Township Pa 18433

Ms. Knick,

On April 10, 2013 an inspection was made of your property on Country Club Rd. based on information that there may be a cemetery on the property. Multiple grave markers/tombstones were found during this inspection. As a result, it has been determined that a "cemetery" as defined by ordinance 12-12-20-001 exists on your property.

This letter will serve as notice that you are in violation of the above referenced ordinance, Section # 4, which requires that all cemeteries be maintained and kept up by the owner of the property where it

resides. "No owner shall allow grass, weeds or trees to accumulate upon same to the extent that any grave marker is obstructed and shall otherwise keep same free of debris and refuse." The stones located on your property were found to be obscured by trees, dirt and weeds. Others have been buried or covered with dirt and leaves.

It has also been determined that you are in violation of section # 5 of the ordinance which requires that all cemeteries within the Township shall be kept open and accessible to the general public during daylight hours. No owner or personal shall unreasonably restrict access to the general public nor shall any fee for access be charged.

Within 30 days from that date of this notice, you are directed to remove any weeds, trees or debris from the cemetery that may be obscuring the graves or markers. The stones that are in the cemetery should be made visible and restored as much as possible, in that they should be stood up to their original position or at the very least laid on the grave face up so that the graves can be identified.

You are also directed to make access to the cemetery available to the public during daylight hours as required by the ordinance.

A second inspection of the property will be conducted in 31 (THIRTY ONE) days from the date of this letter. If the cemetery has not been cleaned, the Township will enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense. All costs of removal and clean up shall be assessed against the you as the property owner and

thereafter shall be collected by the Township pursuant to 53 P.S. §68302(b) of the Second Class Township Code.

In addition, failure to comply with either of these requirements will result in a civil enforcement action being brought by the Township. Upon being found liable in a civil enforcement proceeding before a District Justice or Magisterial District Justice, You shall pay a fine and/or penalty of not less than Three Hundred ($300.00) Dollars nor more than Six Hundred ($600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense.

As always our goal is compliance with the Ordinances of the Township rather that punishment, as such I look forward to your cooperation in this matter. If you have any questions feel free to contact me at the Township Office at 570.319.1296 ext 6 Monday-Friday.

Thank You

s/Carl S. Ferraro
Carl S. Ferraro
Code Enforcement Officer

Sent via certified and first class mail

Cc: File
Supervisors
Solicitor

Document 21 Filed 11/16/2015
United States District Court
for the Middle District of Pennsylvania

EXHIBIT B TO SECOND AMENDED COMPLAINT

SCOTT TOWNSHIP

An Historic Community Founded 1840

COMMONWEALTH OF PENNSYLVANIA

1038 MONTDALE RD. SCOTT TOWNSHIP, PA
18447 PHONE: 570-319-1296 • FAX: 570-319-1321

October 31, 2014

****NOTICE OF VIOLATION****

Rose Knick
49 Country Club Rd
Scott Township PA 18433

Ms. Knick,

Based on information received from eyewitness accounts it has been determined that a "cemetery" as defined by ordinance 12-12-20-001 exists on your property.

This letter will serve as notice that you are in violation of the above referenced ordinance, Section # 4, which requires that all cemeteries be maintained and kept up by the owner of the property where it resides. "No owner shall allow grass, weeds or trees to accumulate upon same to the extent that any grave

marker is obstructed and shall otherwise keep same free of debris and refuse.

It has also been determined that you are in violation of section # 5 of the ordinance which requires that all cemeteries within the Township shall be kept open and accessible to the general public during daylight hours. No owner or personal shall unreasonably restrict access to the general public nor shall any fee for access be charged.

Within 30 days from that date of this notice, you are directed to remove any weeds, trees or debris from the cemetery that may be obscuring the graves or markers. The stones that are in the cemetery should be made visible and restored as much as possible, in that they should be stood up to their original position or at the very least laid on the grave face up so that the graves can be identified.

You are also directed to make access to the cemetery available to the public during daylight hours as required by the ordinance.

An inspection of the property will be conducted in 31 (THIRTY ONE) days from the date of this letter. If the cemetery has not been cleaned, the Township will enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense. All costs of removal and clean up shall be assessed against the you as the property owner and thereafter shall be collected by the Township pursuant to 53 P.S. §68302(b) of the Second Class Township Code.

In addition, failure to comply with either of these requirements will result in a civil enforcement action being brought by the Township. Upon being found

liable in a civil enforcement proceeding before a District Justice or Magisterial District Justice, You shall pay a fine and/or penalty of not less that Three Hundred ($300.00) Dollars nor more than Six Hundred ($600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense.

As always our goal is compliance with the Ordinances of the Township rather than punishment, as such I look forward to your cooperation in this matter. If you have any questions feel free to contact me at the Township Office at 570.319.1296 ext 6 Monday-Friday.

Thank You

s/Carl S. Ferraro
Carl S. Ferraro
Code Enforcement Officer

Personal Service

Cc: File
Supervisors
Solicitor

* * * * *

Transcript of Hearing August 31, 2016

Knick v. Township of Scott

United States District Court

for the Middle District of Pennsylvania

[2]

MR. KOZLOWSKI: Thank you, Your Honor. Judge, as the Court is probably aware at this point, this case has a lengthy procedure history. Briefly I will walk through how we got to where we are at today. I represent Scott Township. The complaint was originally filed in November 2014. Motion to dismiss was filed to that original complaint. In response an amended complaint was filed February 15, and motion to dismiss was filed as to that first amended complaint. This Court issued an order and a – I would say a well reasoned and thorough opinion in October of 2015 granting the motion the dismiss in its entirety.

There were five counts contained in the amended complaint, three of which were dismissed with prejudice, two which were dismissed without, one of which was a request for declaratory relief. In accordance with the Court's order an amended complaint – excuse me – a second amended complaint was filed in November – November 16th, 2015. In response we again – Scott Township filed a motion to dismiss in November that's been fully briefed at this point. That's what brings us here today, and I will briefly address – and I am sure Mr. Breemer will bring this up himself.

In our reply brief – follow the filing of the defendant reply brief, the plaintiff sought leave to file a sur reply. That request was ultimately denied, and

the motion is pending at this point. It's the plaintiff that's actually [3] requested oral argument today. So briefly, Your Honor, the entire lawsuit factually boils down to the passage – as the court is already aware – the passage of the ordinance in Scott Township, Pennsylvania.

THE COURT: How do you know it's a burial ground? That's one missing piece of information.

MR. KOZLOWSKI: Sure. And it takes us slightly outside of the pleadings. I am happy to address it if the Court is interested.

THE COURT: It does. But there's some indication that there was an – a letter from council indicating work on the title and so forth. So I don't know that it is outside of the pleading. If you don't want to answer you don't have to.

MR. KOZLOWSKI: I am happy to answer. I want to make sure I am not taking us into a realm where we start to get into facts that are outside of pleadings, but essentially it – it depends on who you ask. But the neighbors of the Knicks are the Veils. The Veils have claimed that their ancestors are specifically buried on that property. There have been title searches that have been done as far as I am aware, none by Scott Township. There's also some indication based upon media reports, Scranton Times newspaper article, for example, that claims that the Veils have actually been on the Knick property and have seen Veil family tombstones on that property.

Additionally, you can do a simple internet search for [4] Pennsylvania cemeteries that are – sort of been lost in time, and one of which comes up is the Veil family plot located in Scott Township on the 90 acres

owned by the Knick family. That forms the basis for why the township believes that there is or at the time believed there was a cemetery on that property.

You also have a former defendant no longer a defendant in this case, Carl Ferraro, who is the Scott Township code enforcement officer. Mr. Ferraro has been on the property. He was the one that issued the citation to Ms. Knick for not maintaining the cemetery plot essentially on the Knick family property.

So that forms the basis for why Scott Township believes that the Knick property has a cemetery on it. Now, I would also point out, Your Honor, in drafting the Scott Township ordinance, it is not specific to the Knick family. I think there's a big distinction there. While the Knicks have certainly been the subject of citations issued under the ordinance, it was not an ordinance directly – directed at the Knick family only. Had the Scott Township council passed a sort of ordinance that our code enforcement officer can go on the Knick family property at any time to look for a cemetery, we'd have a much different case on our hands. The ordinance is written to apply to all property owners in Scott Township across the board if there's a – if there's a cemetery –

THE COURT: You have a lot of suspected cemeteries in [5] Scott Township?

MR. KOZLOWSKI: Scott Township is a very big town. It goes back several hundred years in terms of families and burial plots. So while these may not be message sprawling cemeteries, you will have small plots that families have maintained for years. So in keeping with the township's interest in maintaining cemetery plots and in keeping – we pointed this out in

our moving papers in both motions. In keeping with the Pennsylvania corporate township powers act, that's 1933 Act 69, it specifically permits a township to pass and implement ordinances dealing with the maintenance of cemeteries on public and private lands.

Getting us back to where we are at today, the motion dismiss, when the second amended complaint was filed, it limited the allegations against Scott Township. It knocked out Carl Ferraro as a party. So the only defendant now is Scott Township itself. Count one, for example, seeks damages for Fourth Amendment search. The Court has already addressed this issue before in its prior memo. The only allegation – really the only thing that's changed as far as count one is concerned was a demand for punitive damages. As a municipality even if there were some sort of constitutional finding, punitive damages are not available.

So as a preliminary matter, even if the Court is not inclined at this point to dismiss again with prejudice, count [6] one, two and three, the punitive damage claims have to go. They can't exist. That's Newport versus Fact Concerts, Inc, and several cases that stemmed from that U.S. Supreme Court case from 1981. Count two is sort of a hodgepodge of different alleged constitutional violations, fourth, fifth and 14th Amendment allegations.

Now, one of the issues that appears to be raised again in the second amended complaint that again has already been addressed by this Court in its memo is whether or not the ordinance itself is constitutional whether it's as applied or on its face. The Court has already held that the ordinance survives rational

basis review. That's coming directly out of Your Honor's opinion. I believe that is now law of the case. So to make these facial challenges to the statute, I believe those allegations have to fail. The count – third count rather, again seeks declaratory judgment, a temporary restraining order, a preliminary injunction and a permanent injunction, all of which I would argue, that the defense would argue, fails because the elements of the likelihood of success has not been met with respect to count one and count two.

These types of declaratory equitable relief requests can only survive if there's some sort of plausible claim or possibility of success on the merits of the claim in order to sustain that type of relief. Really, the last thing I would add, Your Honor – we have been down this road before. The [7] Court issued a very thorough opinion on this topic. Nothing has changed in terms of the allegations and facts and the second amended complaint as compared to the first.

In fact, count one of the amended complaint is literally a cut and paste from count one of the first amended complaint which the Court already dismissed with prejudice. Now, I understand there's an argument that was made that is being – to preserve some sort of appellate issue. That's fine. But just to point out based solely on the pleadings and the facts that are alleged in the second amended complaint the plaintiff again failed to make a plausible Fifth Amendment takings or a 14th Amendment due process action out against Scott Township, and the entire second amended complaint at this point should be dismissed with prejudice.

THE COURT: What about the taking clause?

MR. KOZLOWSKI: Your Honor, the plaintiff has argued in its brief in opposition that the defendant essentially blew past the takings issue and failed to really address the allegation that there was some sort of taking on the property. I would point the Court to not only our in brief in opposition but also the reply brief filed by defendants. And we argued from when the original complaint came in there was a motion to dismiss filed there as all the way to now the second amended complaint that this is not a taking, that this is an ordinance that's been enacted to promote health and safety and welfare of [8] the residents of Scott Township. They have a vested interest in preserving family burial plots, cemeteries within the township. And passing this ordinance is no different as we have mentioned before to ordinances that have been passed by other townships that required restrictions on use of property. And there are specific cases not only in the middle district but also that have fallen – or fall into the Third Circuit and Supreme Court that limitation on economic uses of property does not constitute a taking.

If Scott Township had gone in and said we are physically seizing this property and we are making it a public use, then I would agree with plaintiff's interpretation as to how the property is being designated from a private to a now public use parcel. What the ordinance does – and again it's in keeping –

THE COURT: What about the public access provision of the ordinance?

MR. KOZLOWSKI: Again, it's not taking the property. It's – I think what gets sort of lost in translation here is the term of the – use of the term public. Scott Township isn't taking this property and

turning it into say a park or turning it into some sort of piece of land that's being used for the public good. All the ordinance is requiring is –

THE COURT: Why are you allowing public access?

MR. KOZLOWSKI: Because it is a cemetery within the **[9]** township – township boundary. There needs – to the extent – well, presume that what I said earlier is true that there is, in fact, a family – Veil family plot on the property. The property is now maintained by the Knicks. The Veils theoretically have no right to access that family burial plot like any other family wouldn't have access to –

THE COURT: But the ordinance isn't limited to them. I can go out there and walk around. Where am I walking, by the way? All 90 acres?

MR. KOZLOWSKI: It's within the restriction of what the original cemetery parameters would be and the right of access from a public road or a public access point –

THE COURT: Has that been defined?

MR. KOZLOWSKI: Specifically by the statute, no, but it would be on a case-by-case scenario because you wouldn't have – you wouldn't always have clearcut access in every single situation. Just because the Knick family property sits on 90 acres and happens to be a cemetery at some point on that, the access point from a public road to that cemetery is going to be defined differently than a family plot that may appear on a cemetery that's sits on only 30 acres, whether it sits on one acre for that matter. Going from the road ten feet into a property and then ending up on a – ending up on a cemetery was the general intention of

the ordinance. There needs to be public – there needs to be a public access point in order to [10] get to the cemetery grounds. That's the purpose of the statute.

That's the same reason that the Pennsylvania passed act 1969 to give townships the ability to maintain, control and permit access to these public – to permit access to these family cemetery plots.

THE COURT: Has there been a definition of the location of the cemetery on the 90 acres?

MR. KOZLOWSKI: Specifically defining in terms of say a survey, what – where pins might be?

THE COURT: You tell me.

MR. KOZLOWSKI: I don't know that it's been clearly defined to say it fits within a half acre or that it sits within a one hundred by one hundred square piece of property. The ordinance – the ordinance gives the code enforcement officer with suspicion the right to go on to this – on to this piece of property to identify whether or not a cemetery does exist there and based on that the code enforcement officer has the right to require under the ordinance that private piece of property be maintained and kept open to the public in order for family or public access.

THE COURT: All right.

MR. KOZLOWSKI: And I agree, Your Honor, the ordinance may not specifically have a provision in there that says once it's been discovered that there's a cemetery the [11] following must happen, there must be a – there must be a survey done, clearly define what the limitations of the cemetery parcel are. But I think that's – that's something that because it happens on a

case-by-case basis it's not easily defined within the ordinance.

THE COURT: Okay. Is that it?

MR. KOZLOWSKI: That's it. Thank you.

MR. BREEMER: Good morning, Your Honor. I'm going to come up here if it's all right.

THE COURT: Sure.

MR. BREEMER: I am here this morning with my co-counsel, Mr. Bollock and Rose Mary Knick and appreciate the opportunity to have this hearing. This ordinance causes about a clear taking as you have under settled constitutional precedent that forbids the government from opening up private property to public access, trail or easement, whatever you want to call it, thereby destroying the right to exclude the owner's traditional and fundamentally protected right to control or deny or permit access to his or her own private property.

And in this case, you have an ordinance that allows the government and members of the public, not just family, but anyone to enter and cross Ms. Knick's property to view stones, destroying her privacy, her quiet enjoyment, subjecting her to potential liability, safety issues. And beyond all that, the law just simply doesn't allow this. This is a taking. It's a **[12]** physical invasion of private property. This is a Nolan case, Keyser Aetna case that's already been decided. The Supreme Court held when the government authorizes a right of way or the public it is taking the private properties – fundamental property rights and that requires compensation. In this case, on the facial claim because that ordinance on its face requires public access to all property, as my colleague noted to

all property within the town, it simply has to be struck down, enjoined and declared to be unconstitutional and the town can start again.

As far as the inspection provision, I heard my colleague say that it allows the code inspector to go on with suspicion. The ordinance doesn't say that. What the ordinance says is that code enforcement can go on any property in the town any time to search for the existence and location of cemeteries. There's no geographic limitation, going next to someone house, maybe they buried in the backyard a while back. No limitation on that, no notice, no restrictions, simply a pass to enter into every property on the township. That goes beyond anything the Fourth Amendment allow and goes beyond – you start to get into takings again where you're allowing an easement on private property for a particular purpose, but the purpose doesn't matter when it's a physical invasion. It doesn't matter. This is the Lorretto case. Once you invade private property for any good purpose, it's still a taking **[13]** because you're destroying an owner's fundamental right to exclude the public. You can't have private property without the right to keep it private. What has happened here is that's being destroyed. The town has a – suggested this old Pennsylvania statute authorizes its actions, and it does not.

The statute has never been interpreted or applied to require somebody to open up a small family cemetery that's always been private to the public. It's never been interpreted that way. And if it was interpreted that way for the first time then that would be a taking, but it doesn't have to be interpreted that way. What that statute says it simply gives the town

enough authority to require the clean up of public cemeteries that are already open to the public to require them be kept up, and while that is happening they shall remain open to the public that's – the word remain is important because that suggests that the cemetery is already public.

In this case what the town has said through the notices of violations to Ms. Knick and it made clear in its briefing here is that it requires small family plots that haven't been public like Ms. Knick to now be made public somehow with people walking across her property somewhere for – staying all daylight hours. There's no limitations again on this. This is a – this is a very – it's a very extensive right of permission for the public to go in for Mrs. Knick who lives alone on her property. And in this day and age it's not [14] a – it's not something want to lose the right to control your property, and you want to maintain that. The Constitution allows to you do that. What I suggest is that the motion to dismiss be denied. We will quickly follow up on the facial claims with the motion for summary judgment on these spacial claims. This isn't intensive factual issue because the text of the ordinance is clear on its face that it authorizes public access, and I think we can dispose of this very quickly. And the right thing to do is strike down the ordinance. It's unconstitutional.

THE COURT: The – in terms of the fact there's – they say there are another family buried there and your clients had this for over 70 years.

MR. BREEMER: Since the 70s, I believe.

THE COURT: You did a title search. There's no evidence of any kind of – did this Veil family – I mean,

I know none of these are in the record, but I'm – is it Veil?

MR. BREEMER: Veil.

THE COURT: Did they own the adjoining land?

MR. BREEMER: They are neighbors.

THE COURT: Did they ever own this land in the history of the search?

MR. BREEMER: I do not know. I do not know. No, and I don't know all of those facts. I would say this, Your Honor. It doesn't –

[15] THE COURT: It doesn't matter, right. I agree with that.

MR. BREEMER: It's interesting.

THE COURT: I quite agree with that. Anything else?

MR. BREEMER: If you have no questions I am happy –

THE COURT: I have nothing. Thank you.

MR. BREEMER: Thank you very much.

MR. KOZLOWSKI: Brief reply, Your Honor.

THE COURT: Very.

MR. KOZLOWSKI: The Pennsylvania – the Pennsylvania statute that permits the townships to enact this type of legislation it – there's a difference of interpretation. And I understand that in terms what the word shall means in that ordinance, cemetery shall remain open to the public under the regulation and control. Plaintiff's interpretation is that if this the cemetery is open today it must remain open for

perpetuity and the converse is true. But when you read the entire ordinance – and again this is the Pennsylvania ordinance not just the –

THE COURT: Yeah, I understand.

MR. KOZLOWSKI: Not just the smaller township ordinance. When a cemetery or burial ground is abandoned or being neglected the board of supervisors may give notice to the owner directing the removal of weeds, refuse and debris from the cemetery within 30 days. It presupposes there's going to **[16]** be a cemetery or multiple cemeteries that are going to be abandoned, neglected.

THE COURT: Yeah, you can satisfy your version of the statute, couldn't you, by simply requiring clean-up, maintenance of the plot without providing public access?

MR. KOZLOWSKI: Well, it still gets into the same issue as to how a family member – for example, how would a Veil family member get on to that?

THE COURT: What's in the Pennsylvania statute that requires that?

MR. KOZLOWSKI: I don't know the Pennsylvania statute necessarily goes that far, but I would say that the ordinance itself still provides – or still keeps within the confines of the health, safety and welfare idea that Scott Township has a vested interest in trying to protect those interests of its residents that family members should be able to go on family burial plots even if they sit on somebody else's land. In closing, I will point to the case that's been cited by not only plaintiff but also addressed by the defense, that's Lorretto versus the Teleprompter Manhattan C. A. T.

E. Corp. That's a Supreme Court case from 1982. It's addressed at page 12 in defendant's reply brief.

Plaintiff cites it for the proposition that regulations authorizing physical invasion of property are per se unconstitutional. Respectfully, the defense disagrees with [17] that. And the holding goes further. Easement of passage, and that's the difference here. Easement of passage not being a permanent occupation of land was not considered a taking per se. What is happening here, and it brings me back to where I started. There's a difference in definition of the word public. What the ordinance requires is access. Essentially an easement for lack of a better legal term, for access from a public road or public walkway on to the property where there is a burial cite or a cemetery. It's not a taking of the property. The township is not absorbing it into its coffers as a piece of property now owned or maintained by the township itself.

It's requiring there must be access and that cemeteries must be cleaned up, and if they are not the Pennsylvania statute by extension of the ordinance permits the township to go in there and either a issue a citation or clean it up and provide the owner with the costs of that clean-up.

THE COURT: I understand the clean-up. But you're doing more than that, and you're saying you got to provide an easement but it's not a taking. But Mrs. Knick has no right to exclude people from that so-called easement. Isn't that true?

MR. KOZLOWSKI: I don't know that's necessarily true.

THE COURT: She can stop people from –

MR. KOZLOWSKI: The cemetery does not become, say, a public park where anyone can go on there.

[18] THE COURT: What does it become?

MR. KOZLOWSKI: I think you still have – you still have trespass issues. You still have a right of access issue. If my family does not have a tombstone or burial plot on that particular cemetery I would argue I would have no right to be there.

THE COURT: But your ordinance doesn't say that. Your ordinance says it's public access.

MR. KOZLOWSKI: There must be a public access point. I agree that's what the ordinance says.

THE COURT: That's anybody. Somebody can come from New Jersey and has nothing to do with the property in Scott Township and come on there and say, oh, let's look at the tombstone, isn't that interesting.

MR. KOZLOWSKI: Taking a tour of the local cemeteries. I agree the ordinance does not limit who specifically should be permitted on to that property. Again –

THE COURT: I don't know that it could by the way.

MR. KOZLOWSKI: Well, it's not the government's property to do with it as it wishes. It's still property and still – it's still the property of and maintained by the owner of the property. Scott Township is not coming in and taking Ms. Knick's property from her. It's requiring there be access to a public – simply requiring access to a cemetery plot.

THE COURT: Well, I understand that. The question [19] is, is that access or that easement a taking and should she be compensated for it.

MR. KOZLOWSKI: I think the Lorretto case deals with that where it says that the easement of passage is not permitted occupation of land and it's not considered a taking per se.

THE COURT: What were the facts in Lorretto?

MR. KOZLOWSKI: Your Honor, I don't have that answer.

THE COURT: Okay. It might be important. I don't know what they were.

MR. BREEMER: Would you like me to address it, Your Honor?

THE COURT: Okay.

MR. BREEMER: In Lorretto the city of New York City authorized a cable company by statute to place a cable box on Mrs. Lorretto's building without her permission and without compensation, and the Supreme Court held that that entry, that placement of the object was a physical taking because it physically occupied her property. Now since that time, of course, in subsequent cases including Keyser Aetna and Nolan which were public access cases the Court made clear that a public – that an easement and a public access is considered a physical occupation under the Lorretto rubric because you are allowing people, not a box, but people.

THE COURT: You agree with that?

[20] MR. KOZLOWSKI: I would – Lorretto has not been overturned. I would again say this is not –

this is not the government coming in and requiring or taking the property. It's simply enforcing the Pennsylvania statute through its own local ordinance that requires access to a cemetery burial plot.

THE COURT: Okay. Thank you. All right, thanks, everybody. You will hear from me soon. Thank you. I appreciate it. We're adjourned.

MR. BREEMER: Thank you.

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

Filed 5/7/2013

FRANK J. BOLOCK, JR., ESQ.
Atty. I.D. 29983
212 Front Street
Clarks Summit, PA 18411
Tel. (570) 585-5600
Fax (570) 585-5601
Attorney for Rose Mary Knick

ROSE MARY KNICK 49 COUNTRY CLUB ROAD SCOTT TOWNSHIP, PA 18433 vs. SCOTT TOWNSHIP 1038 MONTDALE ROAD SCOTT TOWNSHIP, PA 18447	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY ACTION SEEKING DECLARATORY JUDGMENT and INJUNCTIVE RELIEF 2013-CV-2309

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are

warned that if you fail to do so the case may proceed without you and a judgment may be entered against you for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

North Penn Legal Services
507 Linden Street,
Suite 300
Scranton, PA 18503
Phone: (570) 342-0184

Pa. Lawyer Referral Service
P.O. Box 1086
100 South Street,
Harrisburg, PA 17108
PA residents phone 1-800-692-7375; out of state Residents phone 1-717-238-6715

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

Filed 5/7/2013

FRANK J. BOLOCK, JR., ESQ.
Atty. I.D. 29983
212 Front Street
Clarks Summit, PA 18411
Tel. (570) 585-5600
Fax (570) 585-5601
Attorney for Rose Mary Knick

ROSE MARY KNICK 49 COUNTRY CLUB ROAD SCOTT TOWNSHIP, PA 18433 Plaintiff vs. SCOTT TOWNSHIP 1038 MONTDALE ROAD SCOTT TOWNSHIP, PA 18447 Defendant	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY ACTION SEEKING DECLARATORY JUDGMENT and INJUNCTIVE RELIEF 2013-CV-2309

COMPLAINT SEEKING DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

AND NOW, comes Plaintiff, Rose Mary Knick, by and through Attorney Frank J. Bolock, Jr., who avers as follows:

1. Plaintiff, Rose Mary Knick, is an adult, competent person, resident and taxpayer of Scott Township, Lackawanna County, Commonwealth of Pennsylvania with an address at 49 Country Club Road, Scott Township, PA 18433.

2. Defendant, Scott Township, is a political sub-division of the Commonwealth of Pennsylvania organized and existing in accordance with the laws of Pennsylvania with a designation as a Township of the Second Class. Defendant, Scott Township's principal office is located at 1038 Montdale Road, Scott Township, Lackawanna County, Commonwealth of Pennsylvania.

3. Plaintiff, Rose Mary Knick, is the owner of certain real estate located within Scott Township as more particularly described in the Deed attached hereto as Exhibit "A" (hereinafter "the Premises"). The Premises is comprised of two parcels intersected by Country Club Road. Parcel one is a 91 acre parcel (more or less) utilized historically as a private working farm.

4. The Premises has been continuously owned and occupied by Rose Mary Knick and/or members of her family dating back from 1970 and continuing up through the present time. The Premises has been utilized over the years as a cultivated farmland, grazing area for horses, cattle and other farm animals.

5. In September 2008, apparently, in response to a citizen inquiry regarding an alleged existence of a burial ground on the Premises, the Scott Township Supervisors and Township Solicitor discussed the issue of the alleged burial ground at several public meetings.

6. In 2008 and early 2009 Plaintiff, Rose Mary Knick, individually and through her then counsel, Attorney Robert Cecchini, made a Right To Know request of the Scott Township Supervisors as to the particulars regarding the suggestion that a burial ground was situate on her property. Rose Mary Knick, individually and through her counsel, advised the Scott Township Supervisors that there was no designation in the chain of title regarding the Premises regarding the existence of a burial ground or cemetery on the Premises. Further, Plaintiff and her counsel advised Scott Township that there was no physical evidence of the existence of a burial ground or cemetery on the Premises.

7. In response to Plaintiff's Right To Know request for the Scott Township Supervisors provided Plaintiff, Rose Mary Knick and her counsel with some written statements of other citizens indicating their belief that a burial ground existed on the Premises.

8. In correspondence dated October 23, 2008 Plaintiff, Rose Mark Knick through her attorney, Robert Cecchini, provided Scott Township through their Solicitor with correspondence confirming that in fact the Premises had no designated burial ground, grave, grave yard or cemetery and further that his review of the chain of title and other documentation confirmed that there had never been any designation, registration or documentation establishing the existence of a cemetery, burial ground or grave yard on the Premises. A copy of Attorney Cecchini's correspondence of October 23, 2008 is attached as Exhibit "B" and is incorporated herein by reference.

9. The Scott Township Board of Supervisors took no further action with regard to the issue of the

cemetery, burial ground or grave yard on Plaintiff's Premises until October 2012 at which time the Scott Township Board of Supervisors enacted an Ordinance, specifically an Ordinance #12-10-18-001. A copy of the aforementioned Ordinance is attached hereto as Exhibit "C" and incorporated herein by reference. Subsequent to the enactment of the aforesaid Ordinance the Township Supervisors took no action to enforce said Ordinance with regard to the Premises of the Plaintiff.

10. At all times relevant hereto the Premises has been posted at regular intervals, "No Trespassing." The Premises is bounded by stonewalls, fences and other boundary markers.

11. In December of 2012 the Scott Township Board of Supervisors enacted an Ordinance 12-12-20-001 dealing with the issue of the operation and maintenance of cemeteries and burial places. The December 2012 Ordinance repealed the October 2012 Ordinance in its entirety. A copy of Ordinance No. 12-12-20-001, is attached hereto as Exhibit "D". The Plaintiff seeks Declaratory and Injunctive Relief with respect to the substantive effects of this Ordinance on her Constitutionally protected property and due process rights.

12. Apparently, the Scott Township Code and Enforcement Officer, Mr. Carl S. Ferraro, without benefit of permission or an administrative warrant conducted an inspection of the Premises. As a consequence of the illegal inspection of the Premises Scott Township through its Code Official directed a Notice of Violation dated April 11, 2013 to Plaintiff. A copy of the Notice of Violation is attached as Exhibit "E" and incorporated herein by reference.

13. On April 19, 2013 Plaintiff hand delivered and had time stamped a Right To Know request to Defendant, Scott Township, requesting "a copy of the inspection referred to in the Notice of Violation dated April 13, 2013 including but not limited to any report, document, photograph, maps." A copy of the Right To Know request is attached hereto as Exhibit "F."

14. By correspondence dated April 26, 2013, Scott Township provided an untimely response to Plaintiff's April 19, 2013 Right To Know request in which they claim an additional 30 days for purposes of legal review. A copy of the Township response is attached hereto as Exhibit "G."

COUNT I.

DELARATORY RELIEF

15. The averments set forth in Paragraphs 1 through 14 are incorporated herein as referenced.

16. Plaintiff, Rose Mary Knick, brings the within action pursuant to the provisions of Pennsylvania's Declaratory Judgment Act, specifically the provisions of 42 Pa. C.S.A. Sections 7533 which provides, in pertinent part,

> "any person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status, or other legal relations are effected by statute, municipal ordinance, contract or franchise, may have determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder."

17. Plaintiff, as owner of the Premises as described herein has received from Defendant, Scott Township the Notice of Violation attached hereto as Exhibit "E" and consequently her interest in these proceedings is direct, substantial and present, and the enforcement action undertaken by Scott Township reveals an actual controversy related to the invasion of Plaintiff's Constitutionally protected property rights.

18. This action is brought for Declaration under said act for the purpose of determining an action and ripe case or controversy between the Parties.

19. Plaintiff asserts that Scott Township Ordinance No. 12-12-20-001 violates the Constitution of the United States of America, the Constitution of the Commonwealth of Pennsylvania and that said Ordinance is illegal, unconstitutional and without force of law in the following respects, among others:

a. The provisions of said Ordinance are vague, and;

b. The provisions of said Ordinance at Section 2 seeks to create a retroactive penal regulation regarding private property in violation of prohibition against expost fact laws, and;

c. The provisions of said Ordinance are unreasonable and have no rationale relation to the promotion of public health and safety and exist as an improper exercise of the Township Police power, and;

d. The provisions of Section 5 of the Ordinance and Section 2 of the Ordinance attempt to impose regulations on private property which require that, "all cemeteries within the

Township shall be kept open and accessible to the general public during day light hours. No owners or personnel shall unreasonably restrict access to the general public nor shall any fee for access be charged." These provisions exist as an effort at public taking without compensation, and;

e. The application of the Ordinance to Plaintiff's private property actually creates a nuisance by mandating public access to and across Plaintiff's private property which is otherwise not open to the public, and;

f. The Ordinance and Scott Township's effort at enforcement as pertains to the Plaintiff is arbitrary, unreasonable, bears no substantial relationship to the promotion of public health and safety, and;

g. The provisions of Section 6 of the Ordinance attempt to grant to the Township rights to access private property which are violative of the Fourth Amendment of the United States Constitution.

20. By reason of the above, Plaintiff seeks a Declaration that Scott Township Ordinance No. 12-12-20-001 is unconstitutional, void, ineffective, without force of law and that Plaintiff is not required to comply with its terms and provisions.

21. In conjunction with said Declarations, Plaintiff also seeks equitable relief in the form of Special Injunction, preliminarily following Hearing and permanently thereafter to preclude and enjoin Scott Township from enforcement of Ordinance No. 12-12-20-001.

22. The harm to Plaintiff as a result of Defendant's attempt to enforce an unconstitutional and void Ordinance is substantial.

23. Unless Defendant is enjoined or other relief is granted, Plaintiff will be deprived of her constitutionally protected property rights.

24. No harm or prejudice will result to Defendant if relief is granted.

25. Plaintiff has no adequate remedy at law.

26. Plaintiff's right to relief is clear.

27. In as much as constitutionality of the Ordinance is at issue, as required by Pennsylvania Rule of Civil Procedure 235, notice of these proceedings have been given to the Attorney General of the Commonwealth of Pennsylvania by registered mail dated May 7, 2013. A copy of the notice and mailing receipt is attached hereto and made a part hereof.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to (a) declare that Scott Township Ordinance 12-12-20 001 is unconstitutional, void, ineffective and without force; (b) declare that Scott Township is precluded from enforcing said Ordinance against Plaintiff and decree that the Notice of Violation dated April 11, 2013 is nullified; (c) grant equitable relief in the form of special injunction, preliminarily following hearing and permanently thereafter, to preclude and enjoin Scott Township from enforcing 12-12-20-001; (d) grant such other and appropriate relief including the award of attorneys' fees.

COUNT II

REQUEST FOR INJUNCTIVE RELIEF

28. The averments set forth in paragraphs 1 through 27 are incorporated herein as referenced.

29. Plaintiff, Rose Mary Knick, seeks equitable relief in the form of a Special Injunction, preliminarily following hearing and permanently thereafter to preclude and enjoin Scott Township in attempting to enforce or apply the provisions of Ordinance 12-12-20-001 to the Premises.

30. The harm to Plaintiff as a result of Defendant's illegal and unconstitutional Ordinance and their effort to apply the provisions of same to the Premises is substantial although difficult, if not impossible, to calculate.

31. Unless Defendant is enjoined or other relief if granted Plaintiff will be deprived of her property rights and her Constitutional Rights will be impaired.

32. No harm or prejudice will result to Defendant is relief is granted.

33. Plaintiff has no adequate remedy at law.

34. Plaintiff's right to relief is clear.

WHEREFORE, Plaintiff respectfully requests Your Honorable Court to grant equitable relief in the form of a Special Injunction, preliminarily following hearing and permanently thereafter, to preclude and enjoin Scott Township from enforcing Ordinance 12-12-20-001 to the Premises.

COUNT III

INJUNCTIVE RELIEF TO PREVENT SCOTT TOWNSHIP FROM ATTEMPTING TO ENFORCE ORDINANCE NO. 12-12-20-001 AS A CONSEQUENCE OF THEIR WARRANTLESS ENTRY ONTO PLAINTIFF'S PROPERTY

35. The averments set forth in paragraphs 1 through 34 are incorporated herein as referenced.

36. Scott Township through its code official directed Plaintiff a Notice of Violation dated April 11, 2013, a copy of which is attached hereto as Exhibit "E". The Notice of Violation indicates, "on April 10, 2013 and inspection was made of your property on Country Club Road based on information that there may be a cemetery on the property. Multiple grave markers, tombstones were found during the inspection. As a result, it has been determined that "a cemetery" as defined by Ordinance 12-12-20-0001 exists on your property."

37. The April 10, 2013 warrantless entry by Scott Townsihp onto Plaintiff's private property is violative of Plaintiff's constitutionally guaranteed right against unreasonable search and seizure.

38. The entry by the Scott Township Code Official onto the private property of Plaintiff, Rose Mary Knick, without an administrative warrant is violative of Plaintiff, Rose Mark Knick's, constitutionally protected Fourth Amendment prohibitions against unreasonable searches and seizures. The United States Supreme Court has consistently held that except in certain carefully defined classes of cases, a search of private property without proper consent is "unreasonable" unless it has

been authorized by a valid search warrant. *Cmara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

39. Plaintiff, Rose Mary Knick, seeks equitable relief in the form of Special Injunction, preliminary following hearing and permanently thereafter to preclude and enjoin Scott Township from pursuing its Notice of Violation and/or otherwise enforcing the provisions of the Ordinance 12-12-20-001 and that all evidence obtained on the basis of their warrantless entry onto private property of Rose Knick on April 10, 2013 be suppressed and barred.

40. The harm to Plaintiff as a result of Defendant's warrantless entry onto her private property is substantial.

41. Unless Defendant is enjoined and the alleged evidence obtained from their warrantless entry is oppressed Plaintiff will be deprived of her constitutionally protected right against reasonable searches and seizures.

42. No harm or prejudice will result to Defendant if relief is granted.

43. Plaintiff has no adequate remedy at law.

44. Plaintiff's right to relief is clear.

WHEREFORE, Plaintiff, Rose Mark Knick, respectfully requests Your Honorable Court to grant equitable relief in the form of a Special Injunction, preliminarily following hearing and permanently thereafter to preclude and enjoin Scott Township from enforcing Ordinance 12-12-20-001 on the basis of their unreasonable and warrantless entry onto Rose Mary's

Knick's private property on April 10, 2013 and such other relief the Court deems just and proper.

Respectfully submitted,

s/ Frank J. Bolock, Jr.
Frank J. Bolock, Jr., Esquire
Atty. I.D. No. 29983
212 Front Street
Clarks Summit, PA 18411
Tel. (570) 585-5600
Fax (570) 585-5601

Attorney for Plaintiff
Rose Mary Knick

VERIFICATION

I, Rose Mary Knick, verify that the facts set forth in the aforegoing Complaint Seeking Declaratory and Injunctive Relief are true and corrent to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 5/7/13

s/ Rose Mary Knick
Rose Mary Knick

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

EXHIBIT A TO COMPLAINT

EVIE RAFALKO McNULTY
LACKAWANNA COUNTY RECORDER OF DEEDS
Scranton Electric Building
507 Linden Street
Scranton, Pennsylvania 18503
(570) 963-6775

Instrument Number – 200808805 *Total Pages – 5
Recorded On 4/17/2008 At 9:32:35 AM
*Instrument Type – DEED
Invoice Number – 103168
*Grantor – KOSLAB, MARGARET
*Grantee – KNICK, ROSE MARY
*Customer – ANN MARIE HOWELLS

*FEES	
STATE WRIT TAX	$0.50
STATE JCS/ACCESS TO JUSTICE	$10.00
RECORDING FEES – RECORDER OF DEEDS	$13.50
AFFORDABLE HOUSING	$13.00
PARCEL CERTIFICATIONS	$12.00
COUNTY IMPROVEMENT FEE	$2.00
ROD IMPROVEMENT FEE	$3.00
TOTAL PAID	$54.00

This is a certification page

DO NOT DETACH

This page is now part
of this legal document.

RETURN DOCUMENT TO:
ANN MARIE HOWELLS
307 W. MARKET STRET
SUITE 1
SCRANTON, PA 18508-2783

(Seal of Recorder of Deeds)

WARRANTY DEED

From

Margaret Koslab, single

To

Rose Mary Knick, single

Commonwealth of Pennsylvania:

: SS.

County of Lackawanna :

Recorded on this _____ day of _____ A.D. 2008, in the Recorder's Office of said County in Deed Book _____ Volume ____ Page _____.

Given under my hand and seal of the said Office, the date above written.

_____Recorder

ANNE MARIE HOWELLS, ESQUIRE
307 WEST MARKET STREET, SUITE #1
SCRANTON, PA 18508-2783
(570) 344-1088

LACKAWANNA COUNTY CERTIFIED PROPERTY IDENTIFICATION

MUNI: 73
PIN: 05102 010 023
USE: 5000 ASSESS
VAL: 17605
DATED 4/17/08 s/ JB
CLERK

LACKAWANNA COUNTY CERTIFIED PROPERTY IDENTIFICATION

MUNI: 73
PIN: 07101 020 002
USE: 2000 ASSESS
VAL: 428
DATED 4/17/08 s/ JB
CLERK

DEED

This Deed, made the 14th day of April, 2008, between *Margaret Koslab, single*, of Borough of Olyphant, County of Lackawanna and Commonwealth of Pennsylvania, herein called Grantor,

AND

Rose Mary Knick, single, of Borough of Jermyn, County of Lackawanna and Commonwealth of Pennsylvania, herein called Grantee.

Witnesseth, that the Grantor, in consideration of the sum of One Dollar ($1.00), the receipt of which is hereby acknowledged, does hereby grant and convey unto the said Grantee, her heirs and assigns,

PARCEL ONE: PIN NUMBER: **05102-010-023**

ALL the certain parcel, piece or plot of land situate, and being in the Township of Scott, County of Lackawanna, and State of Pennsylvania, more fully described and bounded as follows, to wit:

BEGINNING at a point in the center of Pennsylvania State Highway leading from Jermyn to Orvis Corner, said point being the common corner of lands of Semian Hubbard, Lucille Post and Nick Kostukovich; thence along line of Post, Neil Nafus, and Nick Kostukovich and along center of said highway North 4° West 483.8 feet to a point; thence along line of Nafus and Post South 38° 15' West 570.9 feet to a point; South 66° 30' West 346.5 feet to a point at the end of a stone wall at break in said wall; thence continuing along Post lands and along center of said wall South 39° 15' West East 363 feet to a point at the intersection with another wall marking division line

of Draper C. Taylor; thence along Draper Taylor lands South 50° 30' West 1,640 feet to a point at the end of said stone wall common to lands of Lyman Gardner's; thence along said Gardner's lands marked by an old wire fence and thence by a stone wall North 39° 30' West 1,345 feet to the intersection with another stone wall common to other lands of Draper C. Taylor (A 28 feet lane with right-of-way to Draper C. Taylor extends along the last mentioned line and is excepted from this conveyance a distance of 1,345 feet on a course North 39° 30' West parallel to lands of Gardner's); thence along a stone wall North 50° 30' East 2,656.85 feet to a point common to lands now or formerly of Maude E. McLaughlin (D.B. 478, page 548); thence along McLaughlin's land south 40° 20' East 348.15 feet along a stone wall to a point and North 18° 48 East 159 feet to a point in the center of aforementioned state highway; thence along state highway North 25° 56' West 145.2 feet to a point in the center thereof; thence North 50° 30' East 503 feet to an iron pin in a stone wall common to lands of J.H. Snyder; thence along said wall and lands of J. H. Snyder and John Tinklepaugh South 39° 30' East 1,058 feet to a point common to lands of Semian Hubbard at the intersection with another wall; thence along center of said wall and lands of Hubbard, South 50° 30' West, 1,066 feet to the place or point of ***beginning***.

Containing ninety-one acres of land more or less, and being the same lands as shown on a map of lands of Nicholas and Christina Kostukovich as surveyed by Paul A. Lucas, Registered Engineer #7565-E and dated April 4, 1970.

SUBJECT to the same exceptions and reservations as are contained in prior deeds in the chain of title.

PARCEL TWO: PIN NUMBER: **07101-020-002**

ALL the certain piece or parcel of land situate, lying and being in the Scott Township, County of Lackawanna, and State of Pennsylvania, being bounded and described as follows, to wit:

BEGINNING at a point in the center of Pennsylvania State Highway T.R. #347 (extended) leading from Justus corners to Craig (known locally as Craig Road). said point being the common corner of lands of Robert Archkosky and Michael Koslab; thence along center of said road South 17° 18' West 215 feet to a point; thence through Koslab lands North 42° 53' West 589.20 feet to a point common to lands of Kazmierski; thence along Kazmierski lands North 49° 32' East 187.5 feet more or less to a point common to lands of R. Archkosky; thence along Archkosky lands South 42° 53' East 483.50 feet to the place of ***beginning***.

Containing 2.2 acres of land more or less and being the same lands as shown on a map of a portion of lands of Koslab conveyed to Rose Mary Koslab as surveyed by Paul A. Lucas, Registered Engineer #7565-E and dated February 7, 1970.

SUBJECT TO the exceptions and reservations as are contained in prior deed in the chain of title.

BEING THE SAME premises conveyed by Rose Mary Knick to Margaret Koslab by deed dated December 23, 1992, and recorded in the Office of the Recorder of Deeds in and for Lackawanna County, Commonwealth of Pennsylvania at Deed Book

Volume 1419 pages 454-44457 incl., on December 31, 1992.

And the Grantor will warrant Generally the property conveyed.

THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN SUCH CONNECTION DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND, THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHT OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INTSTRUMENT.

THIS IS A TRANSFER FROM Sister TO Sister, THEREFORE NO TRANSFER TAX IS REQUIRED.

No title search was performed nor certificate of title issued with regards to this conveyance.

In witness Whereof, the Grantor has hereunto set her hand and seal the day and year first above written.

Witness:

s/ Anne Marie Howells

s/ Margaret Koslab
Margaret Koslab

STATE OF PENNSYLVANIA :

: SS

COUNTY OF LACKAWANNA :

On this 14th day of April, 2008, before me, a Notary Public, personally appeared ***Margaret Koslab***, known to me to be the person whose names is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

In Witness Whereof, I Hereunto set my hand and official seal.

(Notarial Seal) s/ Anne Marie Howells

I hereby certify the precise address of the Grantee is:

1536 Country Club Road
Jermyn, Pa 18433

s/ Anne Marie Howells
Attorney for Grantee

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

EXHIBIT B TO COMPLAINT

Robert A. Cecchini
Attorney at Law

103 East Drinker Street *(570)347-7887 phone*
Dunmore, PA 18512 *(570)347-9462 fax*

October 23, 2008

Richard A. Fanucci, Esquire
1418 Main Street, Suite 206
Peckville, PA 18452

RE: Scott Township

Dear Attorney Fanucci:

Please be advised that I have been retained by Rose Knick regarding her concern that Scott Township is being mislead and is contemplating action regarding the location and/or regulation and/or maintenance of a cemetery and/or burial ground allegedly on her property. Rose has provided me with certain information from Scott Township Board of Supervisors meetings of September 18, 2008 and October 16, 2008 wherein individuals indicated that they were looking for help to access a cemetery plot. If you are referencing property of Rose Knick please advise me immediately. If so, this correspondence shall serve as notice to you and the Board of Supervisors that I am requesting any and all documentation and/or information under the Right to Know Act that relates to the existence of a cemetery

or burial ground on my client's property. Furthermore, without any information regarding same, you should advise the Township Supervisors and/or employees of the Township that no one is allowed on this private property without my client's knowledge and consent. If there are any graves on the property we will do whatever is necessary and appropriate to resolve this matter in accordance with the laws applicable.

In further response to statements made by you, as Solicitor for the Township, it is my understanding that you have determined that there is a cemetery based on information provided to you and that you have indicated same to the Township Supervisors. You apparently are relying on the Second Class Township Code wherein you stated that the Township can force a property owner to clean up a cemetery and further indicated that notice can be given accordingly. I believe this begs the question, since the Second Class Township Code and Pennsylvania Municipality Act from which it came 53 P.S. § 66536 regarding cemeteries provides in subsection (b) for such action where the cemetery or burial ground is "abandoned". Before the Township can act under subsection (b) it must establish that a cemetery exists. The term cemetery is not defined under the Second Class Township Code nor is it defined in the Municipality Act, but Black's Law Dictionary provides a definition for cemetery as follows:

> "A graveyard or burial ground, a place set apart for interment of the dead."

Furthermore, although the term burial ground is also not defined in Black's Law Dictionary defines burial place as follows:

> "A portion of ground set apart for or occupied by a grave or as a grave or graveyard."

My client's property has no designated area or place set apart that can be identified as such.

Furthermore, even if an area of my client's property could be considered a cemetery or burial ground the Court's have dealt with the concept of abandonment and in *Petition of First Evangelical Lutheran Church of Greensburg PA*, 13 D & 2d 93, 39 West 213 (1958), the Court held that where all resemblance to a cemetery had ceased, all interments had been prohibited and it can no longer be said that the cemetery represents any monument or memory to the dead. Therefore, the legal owner has a right to use the property as he or she sees fit. In order for there to be sufficient evidence of the existence of a cemetery there must be graves, stones, monuments and the like. [See *Petition of Chester Montly Meeting of Religious Society of Friends*, 56 D&C 231 (1946)]

Finally, it would seem to me that the Township involvement is totally unnecessary and could be considered an abuse of authority as it relates to their overall responsibility to ensure fiscal management of the Township. Any action by the Township should follow the procedures of the Township Code and the Pennsylvania Municipal Act under § 66536 (a) regarding action by *ordinance* to make rules and regulations regarding location, operation, and maintenance of cemeteries in the Township. As you properly stated at the Township Meeting the Township Supervisors action is *NOT REQUIRED* and in fact under § 66537 the Board of Supervisors may purchase plots in a cemetery for the interment of service men or service women if it is determined that

such individuals were buried on private lands. In addition, it should be noted to the Supervisors that the Pennsylvania Courts have held that a person whose ancestors or close collateral relatives are interned in a private burial ground they would have standing to insist upon its preservation. [See *Barrick vs. Hockensmith*, 69 D&C 2d 475, 26 Com.L.J. 182 (1975)]. Accordingly, why should the Township taxpayers be responsible for a private matter and to initiate an investigation to make a determination that a cemetery even exists before it can proceed with requesting that the owner clean it up could certainly be costly to the Township and could be considered a misuse of municipal funds. Certainly, if there are veterans or any remains of service men that can be located on my client's property, we will cooperate to the fullest to have these properly removed and relocated, balanced against my client's rights for the protection of her property rights. By copy of this letter I am advising the Township Supervisors of our position in this matter and await hearing from you as per my documentary request stated above herein.

Very truly yours,

s/ Robert A. Cecchini
Robert A. Cecchini

RAC:blh
cc: Rose Knick
James Black
Dave Makala
Michelle Duchnik

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

EXHIBIT C TO COMPLAINT

SCOTT TOWNSHIP
LACKAWANNA COUNTY
ORDINANCE NO. _____

ORDINANCE OF THE TOWNSHIP OF SCOTT TOWNSHIP, LACKAWANNA COUNTY, PENNSYLVANIA, RELATING TO THE OPERATION AND MAINTENANCE OF CEMETERIES AND BURIAL PLACES.

WHEREAS, Scott Township is a Pennsylvania Township of the Second Class duly organized and existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Second Class Township Code grants the Board of Supervisors of the Township to adopt Ordinances in which general or specific powers of the Township may be exercised in order to promote the health, safety and welfare of its residents; and

WHEREAS, 53 P.S. §66536 (a) (§1536) entitled "Cemeteries" authorizes Board of Supervisors to make rules and regulations regarding the location, operation and maintenance of cemeteries within the Township by Ordinance; and

WHEREAS, the Board of Supervisors of Scott Township believes that regulating cemeteries within the Township serves in the best interest of the Township.

NOW, THEREFORE, the Board of Supervisors of the Township of Scott, Lackawanna County, Pennsylvania, hereby **ENACTS** and **ORDAINS** as follows:

1.) **Definitions** –

a. "Burial Place" – A portion of ground either occupied by a tomb or grave or set apart for a tomb or grave for burial of the dead.

b. "Code Enforcement Officer" – The person duly appointed as the official Code Enforcement Officer for Scott Township, Lackawanna County.

c. "Cemetery" – A place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings.

d. "Owner" – An individual(s), entity, group, association or organization who holds title to the land upon which any cemetery is located or who is otherwise vested with the authority to operate/maintain same.

e. "Township" – Scott Township, Lackawanna County, Pennsylvania.

2.) **Applicability** – All cemeteries, whether private or public, and whether existing or established prior to the date of this Ordinance or hereafter created, are subject to the terms and conditions of this Ordinance.

3.) **Establishing Cemeteries** – It shall be unlawful for any person or owner to establish any cemetery or to bury any person within the Township, except within a cemetery duly established in accordance with all laws, regulations, ordinances and procedures.

4.) **Maintenance of Cemeteries** – It shall be the duty of every owner to properly maintain and upkeep any cemetery. No owner shall allow grass, weeds or trees to accumulate upon same to the extent that any grave marker is obstructed and shall otherwise keep same free of debris and refuse.

5.) **Abandoned/Neglected Cemeteries** – When any cemetery or burial place is abandoned or is being neglected and not up-kept or maintained, the Code Enforcement Officer, on behalf of the Board of Supervisors, shall give written notice to the owner directing the removal of weeds, trees, refuse and/or other debris from the cemetery within thirty (30) days. If the removal is not completed within thirty (30) days after the written notice, the Township may enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense. All costs of removal shall be assessed against the owner, if known, and thereafter shall be collected by the Township pursuant to 53 P.S. §68302(b) of the Second Class Township Code. The Code Enforcement Officer and/or his/her agents and representatives may enter upon any property within the Township for the purposes of determining the existence of and location of any cemetery, in order to ensure compliance with the terms and provisions of this Ordinance.

6.) **Violations/Penalties/Enforcement** – Any person or owner who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding before a District Justice or Magisterial District Justice, shall pay a fine and/or penalty of not less than Three Hundred ($300.00) Dollars nor more than One Thousand ($1,000.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense. In any case where penalty for a violation has not been timely paid, and the person against whom the penalty is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed including additional reasonable attorney's fees incurred by the Township in any enforcement proceedings. If the violator neither pays nor timely appeals the judgment, once final, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

Nothing contained herein shall preclude the Township and/or Code Enforcement Officer from instituting any other appropriate civil or equitable proceeding to restrain, correct or abate a violation of this Ordinance as may be allowed for under any and all appropriate laws, statutes, Ordinances and/or regulations.

7.) **Other Laws, Ordinances, Codes or Regulations** – Nothing contained herein shall be deemed to nullify, replace, repeal or abrogate any other law, ordinance, rule, code or regulation regarding cemeteries and same shall be separately

applicable and/or enforceable in accordance with their own terms.

8.) **Severability** – If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not effect or impair any of the remaining provisions, sentences, clauses or parts of this Ordinance and same shall remain in full force and effect.

9.) **Effective Date** – This Ordinance shall become effective five (5) days from the date of its enactment.

This Ordinance is **DULY ENACTED AND ORDAINED** on this ____ day of _____, 2012, at a duly advertised public meeting of the Board of Supervisors.

ATTEST:

_____ _____

Secretary **Supervisor – Chairman**

_____

Supervisor

_____

Supervisor

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

EXHIBIT D TO COMPLAINT

SCOTT TOWNSHIP
LACKAWANNA COUNTY
ORDINANCE NO. 12-12-20-001

ORDINANCE OF THE TOWNSHIP OF SCOTT TOWNSHIP, LACKAWANNA COUNTY, PENNSYLVANIA, RELATING TO THE OPERATION AND MAINTENANCE OF CEMETERIES AND BURIAL PLACES.

WHEREAS, Scott Township is a Pennsylvania Township of the Second Class duly organized and existing under the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Second Class Township Code grants the Board of Supervisors of the Township to adopt Ordinances in which general or specific powers of the Township may be exercised in order to promote the health, safety and welfare of its residents; and

WHEREAS, 53 P.S. §66536 (a) (§1536) entitled "Cemeteries" authorizes the Board of Supervisors to make rules and regulations regarding the location, operation and maintenance of cemeteries within the Township by Ordinance; and

WHEREAS, the Board of Supervisors of Scott Township believes that regulating cemeteries within the Township serves in the best interest of the Township.

NOW, THEREFORE, the Board of Supervisors of the Township of Scott, Lackawanna County, Pennsylvania, hereby ENACTS and **ORDAINS** as follows:

1.) **Definitions** –

a. "Burial Place" – A portion of ground either occupied by a tomb or grave or set apart for a tomb or grave for burial of the dead.

b. "Code Enforcement Officer" – The person duly appointed as the official Code Enforcement Officer for Scott Township, Lackawanna County.

c. "Cemetery" – A place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings.

d. "Owner" – An individual(s), entity, group, association or organization who holds title to the land upon which any cemetery is located or who is otherwise vested with the authority to operate/maintain same.

e. "Township" – Scott Township, Lackawanna County, Pennsylvania.

2.) **Applicability** – All cemeteries, whether private or public, and whether existing or established prior to the date of this Ordinance or hereafter created, are subject to the terms and conditions of this Ordinance.

3.) **Establishing Cemeteries** – It shall be unlawful for any person or owner to establish any cemetery or to bury any person within the Township, except within a cemetery duly established in accordance with all laws, regulations, ordinances and procedures.

4.) **Maintenance of Cemeteries** – It shall be the duty of every owner to properly maintain and upkeep any cemetery. No owner shall allow grass, weeds or trees to accumulate upon same to the extent that any grave marker is obstructed and shall otherwise keep same free of debris and refuse,

5.) **Open to Public** – All cemeteries within the Township shall be kept open and accessible to the general public during daylight hours. No owner or personal shall unreasonably restrict access to the general public nor shall any fee for access be charged.

6.) **Abandoned/Neglected Cemeteries** – When any cemetery or burial place is abandoned or is being neglected and not up-kept or maintained, the Code Enforcement Officer, on behalf of the Board of Supervisors, shall give written notice to the owner directing the removal of weeds, trees, refuse and/or other debris from the cemetery within thirty (30) days. If the removal is not completed within thirty (30) days after the written notice, the Township may enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense. All costs of removal shall be assessed against the owner, if known, and thereafter shall be collected by the Township pursuant to 53 Y.S. §68302(b) of the Second Class Township Code. The Code Enforcement Officer and/or his/her agents and representatives may enter

upon any property within the Township for the purposes of determining the existence of and location of any cemetery, in order to ensure compliance with the terms and provisions of this Ordinance.

7.) **Violations/Penalties/Enforcement** – Any person or owner who violates or permits a violation of this Ordinance, upon being found liable therefore in a civil enforcement proceeding before a District Justice or Magisterial District Justice, shall pay a fine and/or penalty of not less than Three Hundred ($300.00) Dollars nor more than Six Hundred ($600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense. In any case where penalty for a violation has not been timely paid, and the person against whom the penalty is imposed is found to have been liable therefore in civil proceedings, the violator shall be liable for the penalty imposed including additional reasonable attorney's fees incurred by the Township in any enforcement proceedings. If the violator neither pays nor timely appeals the judgment, once final, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

Nothing contained herein shall preclude the Township and/or Code Enforcement Officer from instituting any other appropriate civil or equitable proceeding to restrain, correct or abate a violation of this Ordinance as may be allowed for under any and all appropriate laws, statutes, Ordinances and/or regulations.

8.) **Other Laws, Ordinances, Codes or Regulations** – Nothing contained herein shall be

deemed to nullify, replace, repeal or abrogate any other law, ordinance, rule, code or regulation regarding cemeteries and same shall be separately applicable and/or enforceable in accordance with their own terms.

9.) **Severability** – If any sentence, clause, section or part of this Ordinance is, for any reason, found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not effect or impair any of the remaining provisions, sentences, clauses or parts of this Ordinance and same shall remain in full force and effect.

10.) **Effective Date/Repealer** – This Ordinance shall become effective five (5) days from the date of its enactment. Upon the effective date of this Ordinance, Ordinance #12-10-18-001 is hereby repealed in its entirety.

This Ordinance is **DULY ENACTED AND ORDAINED** on this 20th day of December, 2012, at a duly advertised public meeting of the Board of Supervisors.

ATTEST:

s/ Thomas W. Wuks
Secretary

s/ David Makala
Supervisor – Chairman

s/ Edward R. Hlavaty
Supervisor

_____
Supervisor

Document 39-1 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

EXHIBIT E TO COMPLAINT

SCOTT TOWNSHIP

An Historic Community Founded 1840

COMMONWEALTH OF PENNSYLVANIA

1038 MONTDALE RD. SCOTT TOWNSHIP, PA
18447 PHONE: 570-319-1296 • FAX: 570-319-1321

April 11, 2013

****NOTICE OF VIOLATION****

Rose Knick
49 Country Club Rd
Scott Township Pa 18433

Ms. Knick,

On April 10, 2013 an inspection was made of your property on Country Club Rd. based on information that there may be a cemetery on the property. Multiple grave markers/tombstones were found during this inspection. As a result, it has been determined that a "cemetery" as defined by ordinance 12-12-20-001 exists on your property.

This letter will serve as notice that you are in violation of the above referenced ordinance, Section # 4, which requires that all cemeteries be maintained and kept up by the owner of the property where it resides. "No owner shall allow grass, weeds or trees to

accumulate upon same to the extent that any grave marker is obstructed and shall otherwise keep same free of debris and refuse." The stones located on your property were found to be obscured by trees, dirt and weeds. Others have been buried or covered with dirt and leaves.

It has also been determined that you are in violation of section # 5 of the ordinance which requires that all cemeteries within the Township shall be kept open and accessible to the general public during daylight hours. No owner or personal shall unreasonably restrict access to the general public nor shall any fee for access be charged.

Within 30 days from that date of this notice, you are directed to remove any weeds, trees or debris from the cemetery that may be obscuring the graves or markers. The stones that are in the cemetery should be made visible and restored as much as possible, in that they should be stood up to their original position or at the very least laid on the grave face up so that the graves can be identified.

You are also directed to make access to the cemetery available to the public during daylight hours as required by the ordinance.

A second inspection of the property will be conducted in 31 (THIRTY ONE) days from the date of this letter. If the cemetery has not been cleaned, the Township will enter upon the property and provide for the removal to be done by employees of the Township or persons hired for such purpose at the Township's expense. All costs of removal and clean up shall be assessed against the you as the property owner and thereafter shall be collected by the Township

pursuant to 53 P.S. §68302(b) of the Second Class Township Code.

In addition, failure to comply with either of these requirements will result in a civil enforcement action being brought by the Township. Upon being found liable in a civil enforcement proceeding before a District Justice or Magisterial District Justice, You shall pay a fine and/or penalty of not less than Three Hundred ($300.00) Dollars nor more than Six Hundred ($600.00) Dollars per violation, plus all court costs, including reasonable attorney's fees incurred by the Township in the enforcement of this Ordinance. Each day that the violation exists shall constitute a separate offense.

As always our goal is compliance with the Ordinances of the Township rather that punishment, as such I look forward to your cooperation in this matter. If you have any questions feel free to contact me at the Township Office at 570.319.1296 ext 6 Monday-Friday.

Thank You

s/Carl S. Ferraro
Carl S. Ferraro
Code Enforcement Officer

Sent via certified and first class mail

Cc: File
Supervisors
Solicitor

Document 39-2 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

Oliver, Price & Rhodes
Joseph A. O'Brien, Esquire
Attorney I.D. No. 22103
1212 South Abington Road
P.O. Box 240
Clarks Summit, PA 18411
Ph: (570) 585-1200
Fax: (570) 585-5100
Email: jaob@oprlaw.com

Filed 8/27/2014

ROSE MARY KNICK, Plaintiff vs. SCOTT TOWNSHIP, Defendant	IN THE COURT OF COMMON PLEAS LACKAWANNA COUNTY CIVIL ACTION – LAW No. 2013-CV-2309

NOTICE TO PLEAD

TO: Frank Bolock, Esquire

TO: Rose Mary Knick,

You are hereby notified to file a written response to the enclosed NEW MATTER within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,

/s/ Joseph A. O'Brien, Esquire
Joseph A. O'Brien, Esquire
Attorney I.D. No.: 87641

Oliver, Price & Rhodes
P.O. Box 240
Clarks Summit, PA 18411
Ph: (570) 585-1200
Fax: (570) 585-5100
E-mail: jaob@oprlaw.com

ROSE MARY KNICK, Plaintiff vs. SCOTT TOWNSHIP, Defendant	IN THE COURT OF COMMON PLEAS LACKAWANNA COUNTY CIVIL ACTION No. 2013-CV-2309

ANSWER AND NEW MATTER OF DEFENDANT, SCOTT TOWNSHIP, TO THE COMPLAINT OF PLAINTIFF, ROSE MARY KNICK

1-2. Admitted

3. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of these paragraphs and demands strict proof thereof at the trial of this matter.

4. Defendant lacks knowledge or information sufficient to form a belief as to the allegations of these paragraphs and demands strict proof thereof at the trial of this matter.

5-11. Admitted.

12. Denied as stated. In further answer Defendant alleges that the actions taken by the Scott Township Code Enforcement Officer were authorized under Township and State law.

13-14. Denied as stated. The allegations in these paragraphs constitute conclusions of law and, therefore, are deemed denied.

15. The Defendant re-alleges each and every allegation contained in paragraphs 1-14 of this Answer and incorporates them herein by reference thereto.

16-27. Denied as stated. The allegations of these paragraphs constitute conclusions of law and, therefore, are deemed denied.

28. The Defendant re-alleges each and every allegation contained in paragraphs 1-27 of this Answer and incorporates them herein by reference thereto.

29-34. Denied as stated. The allegations of these paragraphs constitute conclusions of law and, therefore, are deemed denied.

35. Defendant re-alleges each and every allegation contained in paragraphs 1-34 of this Answer and incorporates them herein by reference thereto.

36-44. Denied as stated. The allegations of these paragraphs constitute conclusions of law and, therefore, are deemed denied.

New Matter

1. Plaintiff Complaint fails to state a claim upon which relief can be granted.

2. The Ordinance passed by the Township and the actions taken by Township officials constitute a valid exercise of the Township Police's powers and, therefore, the Plaintiff's

claim for Declaratory and Injunctive Relief should be denied.

Respectfully submitted,

/s/ Joseph A. O'Brien

Joseph A. O'Brien, Esquire
Attorney I.D. No.: 22103
ATTORNEY FOR DEFENDANT,
SCOTT TOWNSHIP
Oliver, Price & Rhodes
1212 South Abington Road
Clarks Summit, PA 18411
Tel: (570) 585-1200
Fax: (570) 585-5100
Email: jaob@oprlaw.com

VERIFICATION

I, Carl Ferraro, Code Enforcement Officer of Scott Township, verify that the statements made in this ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to the unsworn falsification to authorities.

Date: 8/21/14 /s/ Carl Ferraro

CERTIFICATE OF SERVICE

I, **Joseph A. O'Brien, Esquire**, of Oliver, Price & Rhodes, hereby certify that on the 25th day of August, 2014, I served a true and correct copy of the foregoing ANSWER AND NEW MATTER by placing the same in the United States Mail, First Class Postage

Prepaid, at Clarks Summit, Pennsylvania, addressed as follows:

Frank J. Bolock, Jr., Esquire
212 Front Street
Clarks Summit, PA 18411

/s/ Joseph A. O'Brien, Esquire
Joseph A. O'Brien, Esquire

* * * * *

Document 39-3 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

Filed 5/9/2013

FRANK J. BOLOCK, JR., ESQ.
Atty. I.D. 29983
212 Front Street
Clarks Summit, PA 18411
Tel. (570) 585-5600
Fax (570) 585-5601
Attorney for Rose Mary Knick

ROSE MARY KNICK 49 COUNTRY CLUB ROAD SCOTT TOWNSHIP, PA 18433 Plaintiff vs. SCOTT TOWNSHIP 1038 MONTDALE ROAD SCOTT TOWNSHIP, PA 18447 Defendant	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY ACTION SEEKING DECLARATORY JUDGMENT and INJUNCTIVE RELIEF 2013-CV-2309

EMERGENCY MOTION FOR INJUNCTIVE RELIEF

AND NOW, comes Plaintiff, Rose Mary Knick, by and through Attorney Frank J. Bolock, Jr., who moves the Court to preclude and enjoin Defendant, Scott

Township, preliminarily after hearing and thereafter permanently, and in support avers as follows:

1. Plaintiff, Rose Mary Knick, incorporates herein all of the allegations set forth in her Complaint seeking Declaratory and Injunctive Relief.

2. For the reasons set forth in Plaintiff's Complaint Seeking Declaratory and Injunctive Relief Scott Township Ordinance No. 12-12-20-001 is unconstitutional. Scott Township's attempt to enforce said Ordinance through its warrantless entry onto Plaintiff's private property is violative of Plaintiff's Fourth Amendment protection against unreasonable and warrantless searches of private property.

3. Defendant, Scott Township's Ordinance No. 12-12-20-001 is unconstitutional and illegal and Scott Township's efforts to enforce the illegal, unconstitutional Ordinance through the warrantless entry onto the private property of Plaintiff on April 10, 2013 exists as a blatant violation of Plaintiff's constitutionally protected rights.

4. There is no adequate remedy for the unconstitutional and unreasonable actions taken by Defendant, Scott Township in violation of Plaintiff's constitutional rights other than to preclude and enjoin Defendant Scott Township in its effort to enforce its unconstitutional Ordinance against Plaintiff and her property.

5. Defendant, Scott Township will not be prejudiced by the granting of the relief requested.

WHEREFORE, Plaintiff, Rose Mary Knick, respectfully requests the Court to enter an Order of Injunction prohibiting Defendant, Scott Township, from proceeding forward with their prosecution of

Plaintiff as outlined in their April 11, 2013 Notice of Violation. Further, that the Court grant the prayer for relief set forth in the Complaint and to grant to Plaintiff such other relief which the Court deems just, proper and necessary; retain jurisdiction of this matter to grant further relief as may hereinafter appear just, necessary and proper, including the award of attorneys' fees.

Respectfully submitted,

s/ Frank J. Bolock, Jr.

Frank J. Bolock, Jr., Esquire
Atty. I.D. No. 29983
212 Front Street
Clarks Summit, PA 18411
Tel. (570) 585-5600
Fax (570) 585-5601

Attorney for Plaintiff
Rose Mary Knick

VERIFICATION

I, Rose Mary Knick, verify that the facts set forth in the aforegoing Motion for Preliminary Injunction are true and correct to the best of my knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Date: 5/7/13

s/ Rose Mary Knick
Rose Mary Knick

Document 39-3 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

Filed 5/9/2013

ROSE MARY KNICK 49 COUNTRY CLUB ROAD SCOTT TOWNSHIP, PA 18433 Plaintiff vs. SCOTT TOWNSHIP 1038 MONTDALE ROAD SCOTT TOWNSHIP, PA 18447 Defendant	IN THE COURT OF COMMON PLEAS OF LACKAWANNA COUNTY ACTION SEEKING DECLARATORY JUDGMENT and INJUNCTIVE RELIEF 2013-CV-2309

ORDER

AND NOW, this 9th day of May, 2013, upon consideration of the Plaintiff's Emergency Motion for Injunctive Relief, Defendant Scott Township's agreement to withdraw its Notice of Violation dated April 11, 2013 and in accordance with a Stipulation of Counsel for the Parties it is Hereby Ordered that all proceedings by Defendant Scott Township to enforce Ordinance No. 12-12-20-001 against Plaintiff Rose Mary Knick are Stayed pending the resolution of the issues raised in the underlying Complaint seeking Declaratory and Injunctive Relief.

s/ Nealon J.

Document 39-5 Filed 10/25/2016
United States District Court
for the Middle District of Pennsylvania

From: Frank [fbolock@bolocklaw.com]
Sent: Wednesday, September 07, 2016 8:35 PM
To: Kozlowski, Mark J.
Subject: FW: Knick v. Scott Township; 14-2223

From: judith_malave@pamd.uscourts.gov [mailto:judith_malave@pamd.uscourts.gov
Sent: Tuesday, September 06, 2016 11:59 AM
To: fbolock@bolocklaw.com
Cc: robin@bolocklaw.com
Subject: Knick v. Scott Township; 14-2223

Attorney Bolock:

With reference to the pending Motion to Dismiss, and oral argument held in this case last week before Judge Caputo, would you have copies of the pleadings which were originally filed in the Court of Common Pleas of Lackawanna County? I note you make reference to them in the Amended Complaint (pp. 23, 24, 25, 28). If you have copies in your file, would you please provide copies to our Chambers? If possible, could you scan and email them to me as a return email and attachment?

Thank you in advance . . . please call me if you have any questions.

Judy Malave
Courtroom Deputy to Honorable A. Richard Caputo
United States District Court – Middle District of PA
Wilkes-Barre, PA 18701
(570) 831-2559
Facsimile: (570) 829-3948
judith_malave@pamd.uscourts.gov

From: Frank [fbolock@bolocklaw.com]
Sent: Wednesday, September 07, 2016 8:34 PM
To: judith_malave@pamd.uscourts.gov
Cc: 'J. David Breemer'; Kozlowski, Mark J.

Subject: Knick v Scott Township Pleadings from Lackawana Court of Common Pleas 2013 CV 2309

Attachments: Knick Complaint seeking Declaratory and Injunctive relief.pdf; Knick Emergency Motion for Injunctive Relief and Order of Cour.pdf; Scott Township Answer and New Matter.pdf; Knick Reply to Scott Township New Matter.pdf

Judy, as per your request please find attached copies of the pleadings filed in the Lackawanna County Court proceeding. Please let me know if you need anything else. Thank you, Frank Bolock

Bolock Law
212 Front Street
Clarks Summit, PA 18411

Tel: (570) 585-5600
Toll Free: 1-888-511-6860
Fax: (570) 585-5601

Email: FBolock@BolockLaw.com
Website: www.BolockLaw.com

Document 41 Filed 12/8/2016

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF PENNSYLVANIA

ROSE MARY KNICK, **Plaintiff** **vs.** **SCOTT TOWNSHIP and CARL S. FERRARO, Individually and in his Official Capacity as a Scott Township Code Enforcement Officer,** **Defendants**	**CIVIL ACTION LAW** **JURY TRIAL DEMANDED** **CASE NO.: 3:14-CV-02223-RDM** *Electronically Filed*

ORDER

AND NOW, this 8th day of December, 2016, upon consideration of the *MOTION TO SUPPLEMENT RECORD ON APPEAL PURSUANT TO F.R.A.P. 10(e)(2)(B)*, it is **HEREBY ORDERED AND DECREED** that:

1.) the following documents shall be added to the record in the above-captioned matter and to the record on appeal in this matter and/or to the record on appeal before the Third Circuit Court of Appeals, at Docket No.: 16-3587: a.) Complaint Seeking Declaratory Judgment and Injunctive Relief, Lackawanna County C.C.P. Docket No.: 2013-CV-2309, b.) Answer with New Matter of Scott Township, Lackawanna County C.C.P. Docket No.: 2013-CV-2309, c.) Emergency Motion for Injunctive Relief,

Lackawanna County C.C.P. Docket No.: 2013-CV-2309, and d.) Reply to New Matter of Plaintiff, Rose Mary Knick, Lackawanna County C.C.P. Docket No.: 2013-CV-2309, to the record on appeal in this matter; and,

2.) the Clerk of this District Court certify and forward the above-referenced documents, as part of a supplemental record, to the Third Circuit Court of Appeals (Docket No.: 16-3587), as authorized by *Rule 10(e)(2)(B) of the Federal Rules of Appellate Procedure.*

By the Court:

s/ A. Richard Caputo
J.